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CHAPTER 3

International Criminal Law

A. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Extradition Treaties

As discussed in *Digest 2018* at 5 (editor's note), the U.S. extradition treaties with Serbia and Kosovo entered into force on April 23, 2019 and June 13, 2019, respectively, after the parties exchanged instruments of ratification.

2. Extradition Treaty and MLAT with Croatia

On December 10, 2019, the United States and Croatia signed bilateral extradition and mutual legal assistance agreements in Washington, D.C. See Department of Justice press release, available at https://www.justice.gov/opa/pr/united-states-and-croatia-sign-bilateral-agreements-enhancing-law-enforcement-cooperation. Attorney General William P. Barr signed on behalf of the United States and said, "The instruments will further strengthen our bilateral law-enforcement relationship, improving the ability to extradite fugitives and exchange evidence needed for prosecutions." *Id*. The press release further explains:

> The new agreements enhance bilateral relations by affording both nations with better information-sharing and cooperative capabilities. The new extradition agreement modernizes the extradition relationship between the countries, which had been governed by a 1901 treaty. The instrument provides a dual-criminality basis for extradition, and it streamlines the procedures to be followed in pursuing extradition. The mutual legal assistance instrument, the first such bilateral instrument between the countries, will better enable prosecutors to exchange information facilitating the prevention, investigation, and prosecution

of crime. It will improve cooperation in the fight against terrorism, organized crime, corruption, cybercrime, and other serious transnational criminal offenses.

The instruments stem from the legal framework of the U.S.-European Union Agreements on Extradition and Mutual Legal Assistance signed on June 25, 2003, prior to Croatia entering the EU.

3. Extradition of Syrian General Jamil Hassan

On March 5, 2019, the State Department issued a press statement expressing support for Germany's request for Lebanon to extradite Syrian General Jamil Hassan. See March 5, 2019 press statement, available at https://www.state.gov/support-for-germanys-request-for-lebanon-to-extradite-syrian-general-jamil-hassan/. The press statement elaborates on U.S. support generally for accountability for atrocities committed in Syria and on the actions of General Hassan:

> The United States continuously seeks to shed light on abuses committed by the Assad regime, including its use of torture, and calls for the regime to allow for unhindered access of independent monitoring organizations to detention centers. Moreover, the United States supports effective mechanisms for holding those responsible for atrocities in Syria accountable. To that end, the United States would welcome any decision by the Government of Lebanon that would facilitate the lawful extradition of Syrian General Jamil Hassan to Germany, in compliance with the Government of Germany's extradition request and consistent with applicable law.
>
> General Hassan serves as the chief of Syria's Air Force Intelligence Directorate and is notorious for his alleged involvement in the extensive use of torture in Syrian detention centers. The German federal prosecutor issued an arrest warrant against the General in June 2018 for committing crimes against humanity based on a complaint filed by Syrian refugees residing in Germany. The Government of Germany requested the Government of Lebanon to extradite General Hassan, who is reportedly visiting Lebanon to receive medical care. Moreover, the European Union and the United States have previously sanctioned General Hassan due to his support to the Assad regime per Executive Order 13573.

4. Extradition Case: *Aguasvivas v. Pompeo*

On September 18, 2019, a federal district court in Rhode Island granted habeas relief to Cristian Aguasvivas. *Aguasvivas v. Pompeo*, 405 F. Supp. 3d 347 (D.R.I. 2019). A federal district court in Massachusetts had previously certified Aguasvivas's extradition on charges of murder, aggravated robbery, and illegal firearms possession, in accordance with the bilateral extradition treaty between the United States and the Dominican Republic, putting before the Secretary of State the decision of whether to extradite

Aguasvivas. *In re Aguasvivas,* Misc. No. 17-mj-04218 (D. Mass. 2017). The Rhode Island district court granted the habeas petition before the Secretary of State had made a decision on extradition. The court found the extradition request was deficient for including only an arrest warrant with no separate charging document. The court also took into consideration the asylum claim of Mr. Aguasvivas, based on the UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 ("CAT"), alleging that he would face torture in the Dominican Republic. The U.S. brief on appeal from the habeas decision is excerpted below and available at https://www.state.gov/digest-of-united-states-practice-in-international-law/.

* * * *

B. The Dominican Republic Met the Treaty Requirement that It Submit the Document Setting Forth the Charges

1. The Treaty's Flexible Language Should Be Given Effect "The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Medellin v. Texas*, 552 U.S. 491, 506 (2008); *see also, e.g., Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) ("It is well established that, when the statutory language is plain, we must enforce it according to its terms."). Pursuant to Article 7.3 of the Treaty, the Dominican Republic was required to submit, *inter alia*, "a copy of the warrant or order of arrest or detention issued by a judge or other competent authority," and "a copy of the document setting forth the charges against the person sought." *See* Add. 90 (Treaty, Art. 7.3(a), (b)). The plain text of Article 7.3(b) of the Treaty does not specify that any particular type of document is required, only that the document "setting forth the charges" against the subject of the extradition request must be provided.

By including an adaptable and non-specific requirement—that the requesting country provide the document setting forth the charges against the person sought for extradition—the Treaty recognizes that different types of documents may be provided to fulfill this requirement. Prosecuting authorities who are seeking the return of fugitives may employ varying procedures to initiate criminal proceedings, and if the parties to the Treaty had intended to require the submission of a specific type of document, such as an "indictment" or "charge sheet," they could have so required. *See, e.g., Matter of Assarsson*, 635 F.2d 1237, 1243 (7th Cir. 1980) ("If the parties had wished to include the additional requirement that a formal document called a charge be produced, they could have so provided."); *Emami v. U.S. Dist. Ct. for N. Dist. Of Cal.*, 834 F.2d 1444, 1448 (9th Cir. 1987) ("grafting such a [formal charge] requirement as Emami proposes on to the treaty in the instant case is inadvisable").

Moreover, the flexible language of Article 7.3(b) comports with the Treaty as a whole. *See, e.g., U.S. Nat'l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("Over and over we have stressed that in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.") (cleaned up). For example, in describing the parties' extradition obligations, Article 1 of the Treaty refers to persons "sought by the Requesting Party from the Requested Party for prosecution," rather than only persons who have been formally charged. *See* Add. 87 (Treaty, Art. 1).

Conversely, the Treaty reflects that the parties knew how to require a specific document when they so intended. For example, in cases where the fugitive is wanted to serve a sentence, Article 7.4(a) requires "the judgment of conviction, or, if a copy is not available, a statement by a judicial or other competent authority that the person has been convicted or found guilty." *See* Add. 90 (Treaty, Art. 7.4(a)). Thus, Article 7.4(a) is rigid: The requesting country must submit a specific type of document—the judgment of conviction—if it is available. Article 7.3(b) does not impose a similar constraint; any document that sets forth the charges may satisfy the provision.

The Dominican arrest warrant thus satisfies the plain terms of Article 7.3(b) of the Treaty. It describes the criminal acts that Aguasvivas is alleged to have committed and lists the Dominican statutes that Aguasvivas is alleged to have violated. *See* App. 23. It therefore qualifies as "the document setting forth the charges against the person sought." *See* Add. 90 (Treaty, Art. 7.3(b)).

2. Both Parties to the Treaty Agree that the Documentary Requirement Was Met in this Case

Another independent reason that this Court should find that the Dominican warrant satisfies the Treaty's documentary requirement is that doing so accords with the U.S. Department of State's interpretation of the Treaty, as well as that of the Dominican Republic. As the Supreme Court has explained, "[w]hen the parties to a treaty both agree as to the meaning of a treaty provision, and that interpretation follows from the clear treaty language, we must, absent extraordinarily strong contrary evidence, defer to that interpretation." *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982). Such is the case here.

The State Department's view, as set forth in a supplemental declaration from its Assistant Legal Adviser for the Office of Law Enforcement and Intelligence, is that a requesting country is not required to submit separate documents in order to satisfy Articles 7.3(a) and 7.3(b) of the Treaty. *See* App. 209. Accordingly, the State Department takes the position that the warrant issued for Aguasvivas's arrest satisfies both requirements. App. 211. The State Department's interpretation of the Treaty requirements, and their application to this case, is entitled to great weight. *See, e.g.*, *Abbott v. Abbott*, 560 U.S. 1, 15 (2010) ("It is well settled that the Executive Branch's interpretation of a treaty is entitled to great weight.") (internal quotation marks and citation omitted); *United States v. Li*, 206 F.3d 56, 63 (1st Cir. 2000) (en banc) ("We first consult the United States Department of State's interpretation of the two treaties, to which we accord substantial deference.").

While the view of the State Department is entitled to significant deference on its own, such deference is particularly warranted when its view is consistent with that of the treaty partner, as is the case here. *See, e.g.*, *Kolovrat v. Oregon*, 366 U.S. 187, 194 (1961); *cf. Arias Leiva v. Warden*, 928 F.3d 1281, 1288 (11th Cir. 2019) (holding that the U.S.-Colombia extradition treaty is in full force and effect because, *inter alia*, both the United States and Colombia understand it to be in effect). Here the Dominican Republic, through an affidavit by Prosecutor Arias, has confirmed its similar view that the "Treaty does not state as a requirement for grant[ing] or deny[ing] extradition, the prior existence of an indictment against the person required in extradition." *See* App. 213. The Court should give deference to the parties' mutual understanding of the Treaty terms—that a separate charging document is not required to satisfy Article 7.3(b).

The parties' intent not to require a formal charging document is further evidenced by the Dominican Republic's criminal procedure. *See, e.g.*, *United States v. Stuart*, 489 U.S. 353, 369 (1989) ("The practice of treaty signatories counts as evidence of the treaty's proper

interpretation, since their conduct generally evinces their understanding of the agreement they signed."). As described in the extradition request, when a criminal suspect is located abroad, the Dominican Republic may first seek an arrest warrant from a court that states the charges against the fugitive, and the prosecution may obtain a separate charging document *after* the fugitive is arrested and interviewed. *See* App. 15. The Dominican Republic followed these procedures when initiating criminal proceedings against Aguasvivas. *See* App. 214 ("In the case of [Aguasvivas], the Prosecutor wants to know the version of the accused of how and why he perpetrated the facts imputed to him … *prior [to] filing an indictment against him*.") (emphasis added).

Given this procedure, the district court's determination that a separate charging document is required under Article 7.3(b) of the Treaty has potentially far-reaching consequences, as the Dominican Republic could find itself unable to satisfy the treaty requirements in other cases where the fugitive has similarly fled prior to arrest. It is nonsensical that the Dominican Republic would have negotiated and agreed to a treaty term that it may be unable to fulfill, thereby providing safe haven to criminals who have fled to the United States, and frustrating a fundamental purpose of the extradition treaty.

3. Canons of Construction Demand that the Treaty Be Interpreted Liberally in Favor of Extradition

Even if there were any ambiguity as to what Article 7.3(b) requires, an extradition treaty much be construed liberally in favor of extradition. As the Supreme Court articulated in *Factor v. Laubenheimer*, "if a treaty fairly admits of two constructions, one restricting the rights which may be claimed under it, and the other enlarging it, the more liberal construction is to be preferred." 290 U.S. 276, 293-94 (1933); *see also, e.g.*, *Grin v. Shine*, 187 U.S. 181, 184 (1902) (extradition treaties should be "interpreted with a view to fulfil our just obligations to other powers"). This Court, as well as numerous sister circuits, have observed that *Factor* demands that ambiguities in an extradition treaty be construed in favor of the state signatories—that is, in favor of surrendering a fugitive to the requesting country. *Kin-Hong*, 110 F.3d at 110 ("[E]xtradition treaties, unlike criminal statutes, are to be construed liberally in favor of enforcement."); *see also, e.g.*, *In re Extradition of Howard*, 996 F.2d at 1330-31; *Martinez v. United States*, 828 F.3d 451, 463 (6th Cir. 2016) (en banc) (same). Accordingly, to the extent that the Court finds the documentary requirement ambiguous, it must liberally interpret the provision and find that the Dominican warrant fulfills it.

Similarly, the district court's determination is at odds with the longstanding principle that defenses "savor[ing] of technicality" are particularly inappropriate in extradition proceedings. *Bingham v. Bradley*, 241 U.S. 511, 517 (1916); *see also, e.g.*, *Fernandez*, 268 U.S. at 312 ("Form is not to be insisted upon beyond the requirements of safety and justice."); *Skaftouros v. United States*, 667 F.3d 144, 160 (2d Cir. 2011) ("[A]rguments that savor of technicality are peculiarly inappropriate in dealings with a foreign nation.") (internal quotation marks and citation omitted). In this case, the Dominican arrest warrant fulfills the function of making Aguasvivas aware of the charges against him. To require something more would improperly elevate form over substance.

4. The District Court's Reasons for Imposing an Extra-Textual Requirement of a Formal Charging Document Are Unsupported

The district court's reasons for concluding that Article 7.3(b) "refers to a formal charging document," Add. 54, are flawed for a number of reasons. *First*, contrary to the district court's finding, the requirement that the requesting country support its extradition request with "*the* document setting forth the charges" rather than "*a* document setting forth the charges" does not

demand submission of a formal charging document. *See id.* Any document, such as a warrant, that presents the criminal charges can serve as "*the* document setting forth the charges," just as much as it can serve as "*a* document setting forth the charges."

Second, the Treaty's requirement that the requesting country submit an arrest warrant, Article 7.3(a), is not "surplusage" if an arrest warrant also satisfies Article 7.3(b). Rather, the Treaty simply recognizes that, in some cases, the arrest warrant may not set forth the charges. In such circumstances, submission of an arrest warrant is still required under Article 7.3(a) to prove that the foreign country has the power to bring the fugitive into custody upon return, but a separate charging document may also be required to satisfy Article 7.3(b). Nothing, however, precludes an arrest warrant from satisfying both requirements, as is the case here. By way of example, if a treaty required the submission of "the document manifesting the views of Judge A" and "the document manifesting the views of Judge B," a single judicial opinion written by Judge A, but also joined by Judge B, would plainly fulfill both of these requirements.

Third, courts have repeatedly held that a foreign arrest warrant may also be considered a charging document. *See, e.g., Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009) ("We agree that for the purpose of a civil proceeding such as an extradition, a Mexican arrest warrant is the equivalent of a United States indictment … . "); *In re Extradition of Sarellano*, 142 F. Supp. 3d 1182, 1186 n.2 (W.D. Okla. 2015) (finding that a Mexican judge's "arrest warrant 'is a charging document' in the sense that 'it identifies the offense in the criminal code, sets out the essential facts of the alleged crime, and details the evidentiary basis for the charge'") (alteration omitted); *United States v. Nolan*, 651 F. Supp. 2d 784, 795 (N.D. Ill. 2009) (concluding that an arrest warrant from Costa Rica was sufficient to satisfy the treaty's requirement of "the charging document, or any equivalent document issued by a judge or judicial authority"). By contrast, the district court did not cite any cases supporting its conclusion that a separate, formal charging document is required, even where the submitted arrest warrant sets forth the charges.

In sum, the district court erred in reaching the unprecedented conclusion that the Dominican Republic was required to submit a separate, formal charging document even though such an interpretation is not supported by the plain language of the Treaty, is contrary to the intent of the parties to the Treaty, is inconsistent with Dominican criminal procedure, and disregards Supreme Court guidance that favors liberal constructions of extradition treaties.

II. PURSUANT TO THE RULE OF NON-INQUIRY AND TWO CONGRESSIONAL ENACTMENTS, THE DISTRICT COURT WAS BARRED FROM REVIEWING PETITIONER'S CAT CLAIM, AND ITS APPLICATION OF RES JUDICATA WAS ERRONEOUS

The district court was the first court ever to exercise habeas jurisdiction to deny extradition based on a fugitive's CAT claim. In doing so, the court erred in a number of respects. It erroneously concluded that it had habeas jurisdiction to review a CAT claim, when such jurisdiction has never existed in extradition, as Congress has at least twice made clear. Moreover, even if the district court did otherwise have jurisdiction, Aguasvivas's claim was not ripe for the court's consideration because the Secretary has not yet rendered a decision on his surrender. And regardless, the district court's application of res judicata ignored that immigration and extradition are separate proceedings, and one is not preclusive on the other.

A. Standard of Review

While the scope of habeas review in extradition is narrow, *see supra* 17, issues of jurisdiction, justiciability, ripeness, and res judicata are reviewed de novo. *See, e.g.*, *United States v. Santiago-Colon*, 917 F.3d 43, 49 (1st Cir. 2019); *Reddy v. Foster*, 845 F.3d 493, 501

(1st Cir. 2017); *Stern v. U.S. Dist. Court for the Dist. ofMass.*, 214 F.3d 4, 10 (1st Cir. 2000); *Universal Ins. Co. v. Office of Ins. Com'r*, 755 F.3d 34, 37 (1st Cir. 2014).

B. The District Court Was Precluded from Reviewing Petitioner's CAT Claim

1. Courts Have Long Recognized that It Is the Secretary of State's Responsibility to Evaluate Claims Regarding the Treatment a Fugitive May Face in a Requesting Country

Pursuant to 18 U.S.C. § 3186, following certification, the Secretary "determine[s] whether or not the [fugitive] should actually be extradited." *Kin-Hong*, 110 F.3d at 109; *see also, e.g., Hilton v. Kerry*, 754 F.3d 79, 84 (1st Cir. 2014). As this Court has recognized, the Secretary may "decline to surrender the relator on any number of discretionary grounds, including but not limited to, humanitarian and foreign policy considerations." *Kin-Hong*, 110 F.3d at 109.

In light of this legal framework, the Supreme Court, this Court, and myriad other courts have recognized, under the longstanding rule of non-inquiry, that "questions about what awaits the [fugitive] in the requesting country" are reserved for the Secretary and are not judicially reviewable. *Id.* at 111; *see Munaf v. Geren*, 553 U.S. 674, 700 (2008) ("Habeas corpus has been held not to be a valid means of inquiry into the treatment the [fugitive] is anticipated to receive in the requesting state.") (internal quotations and citation omitted); *see also, e.g., Hoxha v. Levi*, 465 F.3d 554, 563 (3d Cir. 2006) ("Under the traditional doctrine of 'non-inquiry' … humanitarian considerations are within the purview of the executive branch and generally should not be addressed by the courts in deciding whether a petitioner is extraditable."); *Ahmad v. Wigen*, 910 F.2d 1063, 1067 (2d Cir. 1990) ("It is the function of the Secretary of State to determine whether extradition should be denied on humanitarian grounds.").

As this Court has stated, "the rule of non-inquiry tightly limits the appropriate scope of judicial analysis in an extradition proceeding." *Kin-Hong*, 110 F.3d at 110. Pursuant to the rule, "courts refrain from investigating the fairness of a requesting nation's justice system, and from inquiring into the procedures or treatment which await a surrendered fugitive in the requesting country." *Id.* (internal quotations and citation omitted). "The rule of non-inquiry, like extradition procedures generally, is shaped by concerns about institutional competence and by notions of separation of powers." *Id.* That rule respects the unique province of the Executive Branch to evaluate claims of possible future mistreatment at the hands of a foreign state, its ability to obtain assurances of proper treatment (if warranted), and its capacity to provide for appropriate monitoring overseas of a fugitive's treatment. Thus, "[i]t is not that questions about what awaits the relator in the requesting country are irrelevant to extradition; it is that there is another branch of government, which has both final say and greater discretion in these proceedings, to whom these questions are more properly addressed." *Id.* at 111.

The origins of the rule of non-inquiry date back well over a century. *See, e.g., Neely v. Henkel*, 180 U.S. 109, 122-23 (1901). In *Neely*, the Supreme Court held that habeas corpus was not available to defeat the extradition of an American citizen to Cuba despite the petitioner's claim that Cuba's laws violated the U.S. Constitution. *Id.* The fact that the petitioner would be subjected to "such modes of trial and to such punishment as the laws of [Cuba] may prescribe for its own people" was not a claim for which "discharge on habeas corpus" could issue. *Id*. at 123, 125.

Neely has stood the test of time and was reaffirmed by the Court in *Munaf*, 553 U.S. at 695-703. There, the habeas petitioners contended that a federal court should enjoin their transfer to Iraqi authorities to face trial in Iraqi courts "because their transfer to Iraqi custody is likely to result in torture." *Munaf*, 553 U.S. at 700. Relying on principles announced in extradition cases, the Court held that "[s]uch allegations are of course a matter of serious concern, but in the

present context that concern is to be addressed by the political branches, not the Judiciary." *Id.* The Court explained that, even where constitutional rights are concerned, "it is for the political branches, not the judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." *Id.* at 700-01.

The *Munaf* Court noted that the government had represented that "it is the policy of the United States not to transfer an individual in circumstances where torture is likely to result," and that such determinations rely on "the Executive's assessment of the foreign country's legal system and the Executive's ability to obtain foreign assurances it considers reliable." *Id.* at 702 (cleaned up). The Court concluded that "[t]he Judiciary is not suited to second-guess such determinations—determinations that would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area." *Id.* "In contrast," the Court explained, "the political branches are well situated to consider sensitive foreign policy issues, such as whether there is a serious prospect of torture at the hands of an ally, and what to do about it if there is." *Id.* The Court rejected the view that the government would be indifferent to that prospect, concluding instead that "the other branches possess significant diplomatic tools and leverage the judiciary lacks." *Id.* at 702-03 (internal quotations omitted).

2. The CAT, the FARR Act, and the REAL ID Act Also Leave No Doubt that Federal Courts Cannot Exercise Habeas Jurisdiction to Review CAT Claims in Extradition Cases

Against the historical backdrop in which the rule of non-inquiry has been consistently and repeatedly applied in extradition cases, the United States undertook international legal obligations under the CAT. The CAT did not alter the longstanding rule of non-inquiry. The Treaty is not self-executing, and Congress has twice made clear that federal courts may not review CAT claims other than in the immigration context.

a. The CAT Is Not Self-Executing

The CAT was adopted by the United Nations General Assembly in 1984. Article 3 of the CAT provides, in relevant part, that no state party shall "extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." That article directs the "competent authorities" responsible for evaluating torture claims to "take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights." CAT, Art. 3.

The Senate gave its advice and consent to the CAT subject to the declaration that "Articles 1 through 16 of the Convention are not self-executing." 136 Cong. Rec. 36,198. Thus, "[t]he reference in Article 3 to 'competent authorities' appropriately refers in the United States to the competent administrative authorities who make the determination whether to extradite, expel, or return…. Because the Convention is not self-executing, the determinations of these authorities will not be subject to judicial review in domestic courts." S. Exec. Rep. No. 101-30, at 17-18 (1990).

b. The FARR Act Does Not Provide for Court Review of CAT Claims in Extradition Cases

Congress implemented Article 3 of the CAT by enacting Section 2242 of the FARR Act. Section 2242(a) states that it is the "policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."

Section 2242(b) of the FARR Act directs the "heads of the appropriate agencies" to prescribe regulations implementing Article 3 of the CAT. The Secretary of State has promulgated regulations providing that, when appropriate, "the Department considers the question of whether a person facing extradition from the U.S. 'is more likely than not' to be tortured in the State requesting extradition." 22 C.F.R. § 95.2(b); *see also* 22 C.F.R. § 95.1(b) (defining torture). The regulations expressly state that the Secretary's surrender decisions are "matters of executive discretion not subject to judicial review." 22 C.F.R. § 95.4. The regulations also make clear that the provisions in the FARR Act providing for judicial review in the context of immigration removal proceedings are "not applicable to extradition proceedings." *Id.*

Critically, Section 2242(d) of the FARR Act clarifies that the statute does not confer courts with jurisdiction to review claims under the CAT outside the context of a final order of removal entered in an immigration case. It states:

> Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), ... *nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the* [*CAT*] *or this section,* or any other determination made with respect to the application of the policy set forth in subsection (a), *except as part of the review of a final order of removal* pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

FARR Act § 2242(d), 112 Stat. 2681-822 (8 U.S.C. § 1231 note) (emphasis added).

c. The REAL ID Act Makes Doubly Clear that Courts May Not Review CAT Claims in Extradition Cases

Congress again addressed judicial review of claims under the CAT when it enacted 8 U.S.C. § 1252(a)(4) as part of the REAL ID Act of 2005, Pub. L. No. 109-13, § 106(a)(1)(B), 119 Stat. 231, 310. That provision states:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

8 U.S.C. § 1252(a)(4). The CAT is therefore not self-executing, the FARR Act does not create jurisdiction for judicial review of claims under the CAT except in certain immigration proceedings, and the REAL ID Act makes doubly clear that specified immigration proceedings "shall be the sole and exclusive means for judicial review of any cause or claim under the [CAT]." *See* FARR Act § 2242(d); 8 U.S.C. § 1252(a)(4). Thus, the CAT did nothing to alter the historical rule of non-inquiry; if anything, its implementing legislation cemented the fact that federal courts may not consider extradition CAT claims.

d. No Court Has Ever Exercised Habeas Jurisdiction to Deny Extradition Based on a CAT Claim

Consistent with the rule of non-inquiry and these congressional enactments, the case law amply supports the conclusion that courts may not exercise habeas jurisdiction to deny extradition based on a CAT claim. In *Hoxha*, 465 F.3d 554, for example, the petitioner sought to

block his extradition to Albania on the grounds that it would violate the CAT and the FARR Act. *See Hoxha*, 465 F.3d at 564. The Third Circuit rejected the claim and held that the CAT is "not self-executing" and "therefore does not in itself create judicially enforceable rights." *Id.* at 564 n.15. The *Hoxha* court held that the CAT's implementing legislation, the FARR Act, "does not *create* court jurisdiction." *Id.* at 564 (emphasis in original). It also held that the rule of non-inquiry continued to apply and the district court "correctly declined to consider Petitioner's humanitarian claims." *Id.*

Similarly, in *Mironescu v. Costner*, the petitioner asserted a CAT claim in an effort to bar his extradition to Romania. 480 F.3d 664, 674 (4th Cir. 2007). But the Fourth Circuit held that Section 2242(d) of the FARR Act "plainly conveys that although courts may consider or review CAT or FARR Act claims as part of their review of a final removal order, they are otherwise precluded from considering or reviewing such claims." *Id.*; *see also id.* at 677 ("Thus, in light of the absence of any other plausible reading, we interpret § 2242(d) as depriving the district court of jurisdiction to consider Mironescu's claims.").

The D.C. Circuit reached the same conclusion in *Omar v. McHugh*, holding that "[b]y its terms, the FARR Act provides a right to judicial review of conditions in the receiving country only in the immigration context, for aliens seeking review of a final order of removal." 646 F.3d 13, 17 (D.C. Cir. 2011) (Kavanaugh, J.). The D.C. Circuit also noted that "[t]he REAL ID Act states that *only* immigration transferees have a right to judicial review of conditions in the receiving country, during a court's review of a final order of removal." *Id.* at 18 (emphasis added).

The Ninth Circuit's decision in *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 957 (2012) (en banc) (per curiam), represents the outermost bounds to which a circuit court has ever exercised jurisdiction in the extradition habeas context to address a fugitive's CAT claim. There, the Ninth Circuit held that the State Department may be required to confirm that it has complied with its regulations implementing the FARR Act; namely, that the Secretary considered the fugitive's torture claims and did not find it "more likely than not" that the fugitive would face torture upon surrender to the requesting country. *See id.* (internal quotations omitted). The *Trinidad* court made clear that if the State Department provides such confirmation, "the court's inquiry shall have reached its end." *Id.* That is because the "doctrine of separation of powers and the rule of non-inquiry block any inquiry into the substance of the Secretary's declaration." *Id.*

In short, the CAT did not displace the rule of non-inquiry and confer a habeas court with jurisdiction to review humanitarian arguments against extradition. To the contrary, the laws and regulations implementing the CAT unambiguously preclude judicial review of CAT claims in the extradition context.

3. The District Court's Contrary Conclusion Is Unsupported and Incorrect

In reaching its contrary conclusion, the district court violated the rule of non-inquiry and incorrectly determined that the Constitution's Suspension Clause required it to review Aguasvivas's CAT claim.

a. The District Court Improperly Disregarded the Longstanding Rule of Non-Inquiry in Becoming the First Court Ever to Deny Extradition on Humanitarian Grounds

When it found that the CAT barred Aguasvivas's extradition, the district court noted that the rule of non-inquiry is not jurisdictional in nature or absolute, applies only "when the petitioner questions the *wisdom* of the Secretary of State's decision to extradite," rather than the "*legality* of the extradition," and does not apply because the BIA has made a CAT determination.

Add. 61-62 (emphasis in original). No court has ever cast aside the well-established doctrine on such grounds, and the court here erred in doing so for a number of reasons.

First, whether the rule of non-inquiry divests the court of jurisdiction to consider Aguasvivas's humanitarian claims or renders such claims non-justiciable makes no practical difference, as the import is the same: The Secretary is responsible for assessing humanitarian claims against extradition rather than the courts.

Second, contrary to the district court's finding, the rule of non-inquiry is routinely applied in cases where the petitioner challenges the legality of his extradition as opposed to its wisdom. *See, e.g.*, *Munaf*, 553 U.S. at 700-01 ("Even with respect to claims that detainees would be denied constitutional rights if transferred, we have recognized that it is for the political branches, not the judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments."); *see also supra* 27-29.

Third, while some courts have recognized a theoretical exception to the rule of non-inquiry in an extreme case, as this Court has noted, "[n]o court has yet applied such a theoretical … exception." *Hilton*, 754 F.3d at 87. Notably, the Supreme Court has never endorsed such an exception and did not entertain its application in *Munaf*, where the petitioners claimed they would be tortured in an Iraqi prison. Regardless, it would be particularly inappropriate to apply such a theoretical exception in this case, where the Secretary has not yet even reviewed Aguasvivas's claims and considered whether any torture concerns could be mitigated through conditions, assurances, and diplomatic leverage.

Fourth, the BIA's CAT determination does not eviscerate the rule of non-inquiry.

As discussed below, *see infra* 45-52, while the Secretary may certainly consider the events in Aguasvivas's separate immigration proceedings, he is not bound by their resolution. In rendering his extradition decision, the Secretary will carefully consider any CAT claims or other arguments against extradition that Aguasvivas chooses to make, and he will not extradite Aguasvivas if he ultimately determines that Aguasvivas is more likely than not to be tortured if surrendered to the Dominican Republic. However, pursuant to the rule of non-inquiry, "[t]he Judiciary is not suited to second-guess" the Secretary's extradition decision. *Munaf*, 553 U.S. at 702.

b. The Suspension Clause Does Not Require the Court to Review a CAT Claim in Extradition

Notwithstanding the rule of non-inquiry, the district court found that it must review Aguasvivas's CAT claim in habeas proceedings because of the "Suspension Clause questions that would arise if the Court construed the provision to divest it of habeas jurisdiction." *See* Add. 59-60, 65. This erroneous conclusion is based on the flawed premise that federal courts historically had jurisdiction to adjudicate CAT claims in extradition proceedings. The writ of habeas corpus cannot be deemed "suspended" because, as a matter of history and practice, the role of the habeas court in extradition cases has never been to adjudicate humanitarian or CAT claims.

The Suspension Clause provides, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. At a minimum, the Clause "protects the writ as it existed when the Constitution was drafted and ratified." *Boumediene v. Bush*, 553 U.S. 723, 746 (2008). The Supreme Court has not yet decided whether the Suspension Clause protects only the right of habeas corpus as it existed in 1789, or whether the Clause's protections have grown with the

expansion of the writ. *Id*. But under either view, the Clause does not require review of Aguasvivas's CAT claim.

The habeas corpus right that existed in 1789 cannot plausibly be extended to the Secretary's surrender decision in extradition proceedings. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention …." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). The historical writ covered "detentions based on errors of law, including the erroneous application or interpretation of statutes." *Id*. at 302. But courts have traditionally "recognized a distinction between eligibility for discretionary relief, on the one hand, and the favorable exercise of discretion, on the other hand." *Id*. at 307. The Secretary of State's surrender decision has historically fallen into the latter category, which is "not a matter of right" that can be judicially enforced through habeas. *Id*. at 308 (quoting *Jay v. Boyd*, 351 U.S. 345, 354 (1956)). The Secretary's decision is thus not subject to habeas review under the writ as it existed when the Constitution was ratified.

Nor has the Supreme Court expanded habeas review of extradition decisions in the years since. As stated, the Supreme Court has consistently held that the treatment a fugitive might receive in the requesting country is not a proper basis for habeas relief to prevent extradition. In *Munaf*, the Supreme Court "examined the relevant history and held that … a right to judicial review of conditions in the receiving country before [the petitioner] is transferred[ ]is not encompassed by the Constitution's guarantee of habeas corpus." *Omar*, 646 F.3d at 23 n.10 (citing *Munaf*, 553 U.S. at 700-03); *see also Munaf*, 553 U.S. at 700 ("Habeas corpus has been held not to be a valid means of inquiry into the treatment the [fugitive] is anticipated to receive in the requesting state.") (internal quotations and citation omitted); *Neely*, 180 U.S. at 123.

While the role of a habeas court in extraditions has not extended to reviewing humanitarian claims, the habeas court has historically had the limited role of determining whether the magistrate judge "had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." *Fernandez*, 268 U.S. at 312. Aguasvivas had full and fair opportunity to litigate these issues, and therefore the writ was not suspended. *See Ye Gon v. Dyer*, 651 Fed. App'x 249, 252 (4th Cir. 2016) (per curiam) (unpublished) (rejecting petitioner's Suspension Clause argument and noting that he "has clearly had the full benefit of habeas review of the extradition request under [the *Fernandez*] standard.") (quoting the district court's decision).

The district court erred in reaching the contrary conclusion that the Suspension Clause necessitated its review of Aguasvivas's CAT Claim. To support its finding that a CAT claim "fell within the historical ambit of habeas," it principally relied on this Court's decision in *Saint Fort v. Ashcroft*, 329 F.3d 191 (1st Cir. 2003), an immigration case. *See* Add. 60. That case, however, is inapposite. In *Saint Fort*, the Court held that a criminal alien subject to an immigration order of removal had a right to habeas review of a CAT claim because there would be a violation of the Suspension Clause if that right was not available. Critically, however, the Court's historical findings that undergirded its Suspension Clause analysis did not encompass the dispositive issue here: Whether fugitives historically had a right to judicial review of the treatment they anticipate receiving in the foreign country in connection with a habeas challenge to extradition. Because the answer to this question is clearly no, there cannot be a Suspension Clause issue in extradition cases.

In *Saint Fort*, the Court emphasized that "[h]istory is important here because the Suspension Clause's protections are at their greatest height when guarding usages of the writ that

date to the founding." 329 F.3d at 202. In the immigration context, the Court noted that "[b]efore 1996, aliens had a *broad right* to judicial review in the courts of appeal," and they could also "challenge a final order of deportation through employing the writ of habeas corpus." *Id.* at 197 (emphasis added). The Court also relied heavily on *St. Cyr*, where the Supreme Court declined to interpret certain other immigration statutes as repealing habeas jurisdiction because "to conclude that the writ is no longer available in this context would represent a departure from historical practice *in immigration law*." *Id.* at 199 (quoting *St. Cyr*, 533 U.S. at 305) (emphasis added). In short, the "weight of historical precedent supporting continued habeas review in immigration cases" was instrumental to the Court's holding that the FARR Act did not "repeal" habeas jurisdiction in that particular immigration context. *Id.* at 200-01.

The Court's recognition in *Saint Fort* that aliens historically had a "broad right to judicial review" in immigration cases contrasts sharply with what this Court, the Supreme Court, and myriad other courts have found to be the case with habeas review in the extradition context, which has always been narrowly construed and where the rule of non-inquiry precludes courts from "inquiring into the procedures or treatment which await a surrendered fugitive in the requesting country." *Kin-Hong*, 110 F.3d at 110 (internal quotations and citation omitted); *see also, e.g.*, *Omar*, 646 F.3d at 19 ("[A]pplying what has been known as the rule of non-inquiry, courts historically have refused to inquire into conditions an extradited individual might face in the receiving country."). Fugitives have never had a right to challenge their extradition based on the type of claim asserted by Aguasvivas, and thus the FARR Act and the REAL ID Act did not repeal or suspend any preexisting rights. Therefore, *Saint Fort* and its predicate, *St. Cyr*, do not support the district court's conclusion. *See, e.g.*, *Omar*, 646 F.3d at 23 n.10 (distinguishing *St. Cyr* on the grounds that it only "protected and enforced what it determined to be the historical scope of the writ") (citing *St. Cyr*, 533 U.S. at 300-05); *Trinidad*, 683 F.3d at 1013 (Kozinski, C.J., dissenting in part) (distinguishing *Saint Fort* from extradition cases where "there's no preexisting 'habeas review' to 'bar'").

* * * *

5. Agreements on Preventing and Combating Serious Crime

On January 5, 2019, the U.S.-Japan Agreement on Enhancing Cooperation in Preventing and Combating Serious Crime entered into force. T.I.A.S. No. 19-105. The agreement was signed in 2014. The full text of the agreement is available at https://www.state.gov/19-105/. For background on these agreements ("PCSC agreements"), which provide a mechanism for the parties' law enforcement authorities to exchange personal data—including biometric (fingerprint) information—for use in detecting, investigating, and prosecuting terrorists and other criminals, see *Digest 2008* at 80–83, *Digest 2009* at 66, *Digest 2010* at 57-58, and *Digest 2011* at 52.

On June 12, 2019, the United States and Poland signed, in Washington D.C., a PCSC agreement. T.I.A.S. No. 19-903. The text of the agreement, with annex, is available at https://www.state.gov/poland-19-903. The agreement entered into force on September 3, 2019.

B. INTERNATIONAL CRIMES

1. Terrorism

a. Determination of Countries Not Fully Cooperating with U.S. Antiterrorism Efforts

On May 29, 2019, Deputy Secretary of State John J. Sullivan issued the determination and certification, pursuant to, *inter alia*, section 40A of the Arms Export Control Act (22 U.S.C. § 2781), that certain countries "are not cooperating fully with United States antiterrorism efforts." 84 Fed. Reg. 24,856 (May 29, 2019). The countries are: Iran, Democratic People's Republic of Korea, Syria, and Venezuela.

b. Country Reports on Terrorism

On November 1, 2019 the Department of State released the 2018 Country Reports on Terrorism. The annual report is submitted to Congress pursuant to 22 U.S.C. § 2656f, which requires the Department to provide Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria set forth in the legislation. The report covers the 2018 calendar year and provides: policy-related assessments; country-by-country breakdowns of foreign government counterterrorism cooperation; and information on state sponsors of terrorism, terrorist safe havens, foreign terrorist organizations, and the global challenge of chemical, biological, radiological, and nuclear terrorism. The annual reports for 2016-18 are available at https://www.state.gov/country-reports-on-terrorism-2/. On November 1, 2019, Acting Under Secretary for Civilian Security, Democracy, and Human Rights Nathan A. Sales provided a briefing on the report, which is available at https://www.state.gov/counterterrorism-coordinator-ambassador-nathan-sales-on-the-release-of-the-country-reports-on-terrorism-2018/, and excerpted below.

* * * *

The Country Reports on Terrorism offers the most detailed look that the Federal Government offers on the global terrorist landscape. Today, I'm going to highlight three key trends that we saw in the 2018 report.

First, in 2018, the United States and our coalition partners nearly completed the destruction of the so-called ISIS caliphate while increasing pressure on the terror group's global networks. Second, the Islamic Republic of Iran remained the world's worst state sponsor of terrorism, and the administration continued to subject the regime to unrelenting diplomatic and economic pressure. Third, the world saw a rise in racially or ethnically motivated terrorism—a disturbing trend that the administration highlighted in our 2018 National Counterterrorism Strategy.

In addition to these three broad trends, I will also highlight some important steps the United States and our partners took in 2018 to counter terrorist threats.

Before getting into the report itself, however, I'd like to give you some overall numbers. In 2018, most terrorist incidents around the world were concentrated in three regions: the Middle East, South Asia, and Sub-Saharan Africa. These three regions experienced about 85 percent of all terrorist incidents. The 10 countries with the greatest number of terrorist incidents in 2018 contributed 75 percent of the overall number.

And as for those three broad trends, first, the United States and our partners made major strides to defeat and degrade ISIS. In 2017 and 2018, we liberated 110,000 square kilometers of territory in Syria and Iraq, and freed roughly 7.7 million men, women, and children from ISIS's brutal rule. Those successes laid the groundwork for continued action in 2019, including the total destruction of the physical caliphate and last week's raid that resulted in the death of Abu Bakr al-Bahgdadi.

As the false caliphate collapsed, we saw ISIS's toxic ideology continue to spread around the globe in 2018. ISIS recognized new regional affiliates in Somalia and in East Asia. Foreign terrorist fighters headed home or traveled to third countries to join ISIS branches there, and homegrown terrorists—people who have never set foot in Syria or Iraq—also carried out attacks. We saw ISIS-directed or inspired attacks outside the core in places like Paris, Quetta, and Berlin, among others. Many of these attacks targeted soft targets and public spaces, like hotels, tourist resorts, and cultural sites.

Having destroyed the so-called caliphate, we are now taking the fight to ISIS branches around the world. In 2018, the State Department sanctioned eight ISIS affiliates, including in Southeast Asia, West Africa, and North Africa.

Second, in 2018, the Islamic Republic of Iran retained its standing as the world's worst state sponsor of terrorism, as it has every year since 1984. The regime, often through its Islamic Revolutionary Guard Corps, or IRGC, has spent nearly a billion dollars a year to support terrorist groups that serve as its proxies and promote its malign influence around the region—groups like Hizballah and Hamas and Palestinian Islamic Jihad.

But the Iranian threat is not confined to the Middle East; it's truly global. In 2018, that threat reached Europe in a big way. In January, Germany investigated 10 suspected IRGC Quds Force operatives. In the summer, authorities in Belgium, France, and Germany thwarted an Iranian plot to bomb a political rally near Paris. In October, an Iranian operative was arrested for planning an assassination in Denmark. And in December, Albania expelled two Iranian officials for plotting terrorist attacks there.

Countering Iran-backed terrorism is and has been a top priority for this administration. That's why in December of 2018 we hosted the first ever Western Hemisphere Counterterrorism Ministerial to focus on threats close to home, particularly the threats posed by Hizballah, Iran's terrorist proxy.

In addition, to give a sneak preview of one of the highlights we'll see in next year's report, in April of this year, the State Department designated Iran's IRGC as a foreign terrorist organization. This was the first time we've ever so designated a state actor.

Third, in 2018, we saw an alarming rise in racially or ethnically motivated terrorism, including here in the United States with the Pittsburgh synagogue shooting. Similar to Islamist terrorism, this breed of terrorism is inspired by a hateful, supremacist, and intolerant ideology. Make no mistake; we will confront all forms of terrorism no matter what ideology inspires it.

In 2018, the administration's National Counterterrorism Strategy specifically highlighted racially and ethnically motivated terrorism as a top national security priority. This was the first such strategy to ever address this threat.

In addition, here at the State Department, we are combatting this threat with our Countering Violent Extremism, or CVE, authorities. We're using the Strong Cities Network to address radicalization and recruitments. In addition, we're working with tech companies to counter racially or ethnically motivated extremism by developing positive narratives and building resilience to hateful messages.

Let me move on to describe some of the key lines of effort we've pursued to protect our homeland and to protect our interest from these threats.

We made major strides to defeat and degrade terrorist groups in 2018, and I'd like to draw your attention to three particular lines of effort: securing our borders and defeating terrorist travel; second, using sanctions to cut off money; and third, the disposition of captured foreign terrorist fighters, or FTFs.

Restricting terrorist travel remained a top priority last year. We continue to pursue arrangements to share terrorist watch lists with other countries pursuant to Homeland Security Presidential Directive 6, or HSPD 6. We signed a number of new arrangements in 2018 and now have over 70 on the books. In addition, our border security platform, known as PISCES—that stands for Personal Identification Secure Comparison and Evaluation System—grew to include 227 ports of entry in 23 countries. Our partners use it every day to screen more than 300,000 travelers.

Second, the United States continued to use our sanctions and designations authorities to deny terrorists the resources they need to commit attacks. In all, the State Department completed 51 terrorism designations in 2018, and the Treasury Department likewise completed 157 terrorism designations. Significant State Department designations in 2018 include ISIS-West Africa, al-Qaida affiliates in Syria such as the al-Nusrah Front, and JNIM, which is al-Qaida's affiliate in Mali. We also designated Jawad Nasrallah, the son of Hizballah's leader, who recruited individuals to carry out terrorist attacks against Israel.

Third, as the President has made clear, all countries have an obligation to repatriate and prosecute their FTFs for any crimes they've committed. The United States has led by example by repatriating our own citizens. To date, we've brought back and prosecuted six adult fighters or ISIS supporters, and we've also returned 14 children who are now being rehabilitated and reintegrated. In addition, the United States has facilitated the returns of hundreds of FTFs and family members to their countries of origin while also sharing evidence that our soldiers captured on the battlefield to enable effective prosecutions. Again, we urge other countries to follow our lead and take their citizens back.

* * * *

c. U.S. Actions Against Terrorist Groups

(1) General

Designations of Foreign Terrorist Organizations ("FTOs") under § 219 of the Immigration and Nationality Act ("INA"), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), Pub. L. No. 108-458, 118 Stat. 3638 (2004), expose

and isolate the designated terrorist organizations, deny them access to the U.S. financial system, and create significant criminal and immigration consequences for their members and supporters. U.S. designations complement the law enforcement actions of other governments. On August 21, 2019, the Department of State issued a statement by Secretary Pompeo welcoming the designations of terrorist organizations by the government of Paraguay. The statement, available at https://www.state.gov/paraguays-designation-of-hizballah-as-a-terrorist-organization/, identifies Hizballah, al-Qa'ida, ISIS, and Hamas as terrorist organizations recognized by Paraguay. Further, the statement notes that other nations had recently designated Hizballah, including Argentina, Kosovo, and the United Kingdom, joining Australia, Canada, the Gulf Cooperation Council, and the Arab League in doing so.

(2) Foreign Terrorist Organizations

(i) New Designation

In 2019, the Secretary of State designated one additional organization and its associated aliases as an FTO. On April 8, 2019, the Secretary of State announced his intent to designate the Islamic Revolutionary Guard Corps ("IRGC"), including its Qods Force, as an FTO. See April 8, 2019 State Department media note, available at https://www.state.gov/intent-to-designate-the-islamic-revolutionary-guards-corps-as-a-foreign-terrorist-organization/. The designation was effective on April 15, 2019. 84 Fed. Reg. 15,278 (Apr. 15, 2019). The media note explains:

> The IRGC provides funding, equipment, training, and logistical support to a broad range of terrorist and militant organizations, totaling approximately one billion dollars annually in assistance. The IRGC has also been directly involved in terrorist plotting, malign activity and outlaw behavior in many countries, including Germany, Bosnia, Bulgaria, Kenya, Bahrain, and Turkey, among others.
>
> This designation will have a significant impact. It is the first time that the United States has designated a part of another government as an FTO. This action underscores that the Iranian regime's use of terrorism makes it fundamentally different from any other government. Iran employs terrorism as a central tool of its statecraft; it is an essential element of the regime's foreign policy. This designation also gives the United States Government additional tools to counter Iranian-backed terrorism. It will increase the financial pressure and isolation of Iran, and starve the government of resources it could devote to its terrorist pursuits.
>
> Other governments and the private sector will also be on notice about the full scope of the IRGC's malign activities. The IRGC is integrally woven into the Iranian economy, operating front companies and institutions around the world that engage in both licit and illicit business activity. The profits from what appear to be legitimate business deals could end up unwittingly supporting Iran's terrorist agenda.

On April 8, 2019, the Department issued a fact sheet on the designation of the IRGC. The fact sheet is excerpted below and available at https://www.state.gov/designation-of-the-islamic-revolutionary-guard-corps/.

* * * *

- On April 15, the IRGC will be added to the State Department's FTO list, which includes 67 other terrorist organizations including Hizballah, Hamas, Palestinian Islamic Jihad, Kata'ib Hizballah, and al-Ashtar Brigades.
- The IRGC FTO designation highlights that Iran is an outlaw regime that uses terrorism as a key tool of statecraft and that the IRGC, part of Iran's official military, has engaged in terrorist activity or terrorism since its inception 40 years ago.
- The IRGC has been directly involved in terrorist plotting; its support for terrorism is foundational and institutional, and it has killed U.S. citizens. It is also responsible for taking hostages and wrongfully detaining numerous U.S. persons, several of whom remain in captivity in Iran today.
- The Iranian regime has made a clear choice not only to fund and equip, but also to fuel terrorism, violence, and unrest across the Middle East and around the world at the expense of its own people.
- The Iranian regime is responsible for the deaths of at least 603 American service members in Iraq since 2003. This accounts for 17% of all deaths of U.S. personnel in Iraq from 2003 to 2011, and is in addition to the many thousands of Iraqis killed by the IRGC's proxies.
- This action is a significant step forward in our maximum pressure campaign against the Iranian regime. We will continue to increase financial pressure and raise the costs on the Iranian regime for its support of terrorist activities until Tehran abandons this unacceptable behavior.

The IRGC, with the support of the Iranian government, has engaged in terrorist activity since its inception 40 years ago.

- The IRGC—most prominently through its Qods Force—has the greatest role among Iran's actors in directing and carrying out a global terrorist campaign.
    - In recent years, IRGC Qods Force terrorist planning has been uncovered and disrupted in many countries, including Germany, Bosnia, Bulgaria, Kenya, Bahrain, and Turkey.
    - The IRGC Qods Force in 2011 plotted a brazen terrorist attack against the Saudi Ambassador to the U.S. on American soil. Fortunately, this plot was foiled.
    - In September 2018, a U.S. federal court found Iran and the IRGC liable for the 1996 Khobar Towers bombing which killed 19 Americans.
    - In 2012, IRGC Qods Force operatives were arrested in Turkey for plotting an attack and in Kenya for planning a bombing.
    - In January 2018, Germany uncovered ten IRGC operatives involved in a terrorist plot in Germany, and convicted another IRGC operative for surveilling a German-Israeli group.

- The IRGC continues to provide financial and other material support, training, technology transfer, advanced conventional weapons, guidance, or direction to a broad range of terrorist organizations, including Hizballah, Palestinian terrorist groups like Hamas and Palestinian Islamic Jihad, Kata'ib Hizballah in Iraq, al-Ashtar Brigades in Bahrain, and other terrorist groups in Syria and around the Gulf.
- In addition to its support of proxies and terrorist groups abroad, Iran also harbors terrorists within its own borders, thereby facilitating their activities. Iran continues to allow Al Qaeda (AQ) operatives to reside in Iran, where they have been able to move money and fighters to South Asia and Syria. In 2016, the U.S. Treasury Department identified and sanctioned three senior AQ operatives residing in Iran and noted that Iran had knowingly permitted these AQ members, including several of the 9/11 hijackers, to transit its territory on their way to Afghanistan for training and operational planning.

* * * *

Also on April 8, 2019, Secretary Pompeo gave remarks to the press regarding the designation of the IRGC. His remarks (not excerpted herein) are available at https://www.state.gov/remarks-to-the-press-9/. The designation of the IRGC as an FTO appeared in the Federal Register on April 15, 2019. 84 Fed. Reg. 15,278 (Apr. 15, 2019).

(ii) Amendments of FTO Designations

During 2019, the State Department amended the designations of several FTOs to include additional aliases. The designation of the Islamic State of Iraq and Syria ("ISIS") was amended to add additional aliases (Amaq News Agency, Al Hayat Media Center, and others). 84 Fed. Reg. 10,882 (Mar. 22, 2019). The designation of Jundallah was amended to reflect its new primary name Jaysh al-Adi and additional aliases. 84 Fed. Reg. 31,656 (July 2, 2019); see also July 2, 2019 media note, available at https://www.state.gov/terrorist-designations-of-balochistan-liberation-army-and-husain-ali-hazzima-and-amendments-to-the-terrorist-designations-of-jundallah/. The designation of al-Shabaab was amended to include the following new aliases: al-Hijra, Al Hijra, Muslim Youth Center, MYC, Pumwani Muslim Youth, Pumwani Islamist Muslim Youth Center. 84 Fed. Reg 37,708 (Aug. 1, 2019).

(iii) Reviews of FTO Designations

During 2019, the Secretary of State continued to review designations of entities as FTOs, consistent with the procedures for reviewing and revoking FTO designations in § 219(a) of the INA. See *Digest 2005* at 113–16 and *Digest 2008* at 101–3 for additional details on the IRTPA amendments and review procedures.

The Secretary reviewed each FTO individually and determined that the circumstances that were the basis for the designations of the following FTOs have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant revocation:

- Kurdistan Workers' Party ("PKK") (84 Fed. Reg. 8150 (Mar. 6, 2019)); see also March 1, 2019 State Department media note, available at https://www.state.gov/state-department-maintains-foreign-terrorist-organization-fto-designation-of-the-kurdistan-workers-party-pkk/;
- ISIS (with amendment, discussed *supra*) (84 Fed. Reg. 10,882 (Mar. 22, 2019));
- Shining Path (84 Fed. Reg. 27,390 (June 12, 2019));
- Jundallah (with amendment, discussed *supra*) (84 Fed. Reg. 31,656 (July 2, 2019));
- al-Murabitoun (al-Mulathamun Battalion and Other Aliases) (84 Fed. Reg. 70,260 (Dec. 20, 2019));
- Al-Qa'ida in the Islamic Maghreb (84 Fed. Reg. 70,261 (Dec. 20, 2019));
- Ansar al-Dine (84 Fed. Reg. 70,260 (Dec. 20, 2019));
- Harakat ul-Jihad-i-Islami/Bangladesh (84 Fed. Reg. 70,260 (Dec. 20, 2019));
- Revolutionary People's Liberation Party/Front (84 Fed. Reg. 70,260 (Dec. 20, 2019)).

(3) Rewards for Justice Program

On February 28, 2019, the State Department announced a Rewards for Justice ("RFJ") program reward offer of up to $1 million for information on Hamza bin Laden, a key al-Qa'ida leader, who was previously designated pursuant to Executive Order ("E.O.") 13224. The media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-al-qaida-key-leader-hamza-bin-laden/, includes the following background:

> Hamza bin Laden is the son of deceased former AQ leader Usama bin Laden and is emerging as a leader in the AQ franchise. Since at least August 2015, he has released audio and video messages on the Internet calling on his followers to launch attacks against the United States and its Western allies, and he has threatened attacks against the United States in revenge for the May 2011 killing of his father by U.S. service members.

On April 22, 2019, the State Department announced in a media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-hizballahs-financial-networks/, that the RFJ program was offering a reward of up to $10 million for information leading to the disruption of the financial mechanisms of the Hizballah foreign terrorist organization. The media note provides the following background:

> Hizballah is a Lebanon-based terrorist organization that receives weapons, training, and funding from Iran, which the Secretary of State designated as a state sponsor of terrorism in 1984. Hizballah generates about a billion dollars a

year from a combination of direct financial support from Iran, international businesses and investments, donor networks, and money laundering activities.

The announcement also identifies three individuals as key Hizballah financiers or facilitators about whom the RFJ program seeks information. The media note provides background on these individuals:

> **Adham Tabaja** is a Hizballah member who maintains direct ties to senior Hizballah organizational elements, including the group's operational component, Islamic Jihad. Tabaja also holds properties in Lebanon on behalf of the group and conducts business throughout the Middle East and West Africa. He is majority owner of the Lebanon-based real estate development and construction firm Al-Inmaa Group for Tourism Works. The Treasury Department designated Tabaja, Al-Inmaa Group for Tourism Works, and its subsidiaries as SDGTs in June 2015.
>
> **Mohammad Ibrahim Bazzi** is a key Hizballah financier who has provided millions of dollars to Hizballah generated from his business activities in Europe, the Middle East, and Africa. He owns or controls Global Trading Group NV, Euro African Group LTD, Africa Middle East Investment Holding SAL, Premier Investment Group SAL Offshore, and Car Escort Services S.A.L. Off Shore. The Treasury Department designated Bazzi and his affiliated companies as SDGTs in May 2018.
>
> **Ali Youssef Charara** is a key Hizballah financier as well as Chairman and General Manager of Lebanon-based telecommunications company Spectrum Investment Group Holding SAL, and has extensive business interests in the telecommunications industry in West Africa. Charara has received millions of dollars from Hizballah to invest in commercial projects that financially support the terrorist group. The Treasury Department designated Charara and Spectrum Investment Group as SDGTs in January 2016.

On July 19, 2019, the State Department announced, in a media note available at https://www.state.gov/reward-offer-for-information-on-hizballah-key-leader-salman-raouf-salman/, that the RFJ program was offering a reward of up to $7 million for information on Salman Raouf Salman, a key leader of Hizballah. Salman was concurrently designated pursuant to E.O. 13224. See Chapter 16. The media note includes the following background on Salman:

> Salman is most well-known for his prominent role in the July 18, 1994, bombing of the Argentine Jewish Mutual Aid Society (AMIA), a Jewish community center in Buenos Aires, Argentina, which resulted in the deaths of 85 innocent civilians.
>
> Salman is a leader of Hizballah's External Security Organization (ESO), which is responsible for planning, coordinating, and executing Hizballah terrorist attacks around the globe. Not only does he direct and support Hizballah terrorist activities in the Western Hemisphere, he has been involved in plots worldwide.

On August 21, 2019, the State Department announced an RFJ reward offer of up to $5 million for information on key ISIS leaders Amir Muhammad Sa'id Abdal-Rahman al-Mawla, Sami Jasim Muhammad al-Jaburi, and Mu'taz Numan 'Abd Nayif Najm al-Jaburi. See media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-leading-to-identification-or-location-of-isis-deputies-2/.

On September 4, 2019, a State Department media note announced an RFJ reward offer of up to $15 million for information leading to the disruption of the financial mechanisms of Iran's Islamic Revolutionary Guard Corps ("IRGC") and its branches, including the IRGC-Qods Force ("IRGC-QF"). The media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-the-financial-mechanisms-of-irans-islamic-revolutionary-guard-corps-and-its-branches-including-the-irgc-qods-force/, lists the types of information sought. Special Representative for Iran and Senior Advisor to the Secretary Brian Hook provided a briefing on September 4 regarding the reward offer in the context of the maximum pressure campaign against the Islamic Republic of Iran. The briefing is available at https://www.state.gov/special-representative-for-iran-and-senior-advisor-to-the-secretary-brian-hook/. Mr. Hook's statement includes the following:

> Today's announcement is historic. It's the first time that the United States has offered a reward for information that disrupts a government entity's financial operations. We have taken this step because the IRGC operates more like a terrorist organization than it does a government. The IRGC and the Qods Force were designated as a foreign terrorist organization in April, and this put them in the same category as many of the terrorist groups that they actively support, such as Hizballah and Hamas.
>
> The IRGC trains, funds, and equips proxy organizations across the Middle East. Iran wants these groups to extend the borders of the regime's revolution and sow chaos and sectarian violence. We are using every available diplomatic and economic tool to disrupt these operations.
>
> In addition to announcing individual rewards of up to $15 million against the IRGC and the Qods Force, the United States today is also taking sweeping action against an IRGC/QF oil-for-terror network. The IRGC has been running an illicit petroleum shipping network over the last several months. This network has moved hundreds of millions of dollars' worth of illicit oil. That money is then used to fund terrorism.

On October 4, 2019, the State Department announced an RFJ program reward offer of up to $5 million for information on Adnan Abu Walid al-Sahrawi, leader of the Islamic State in the Greater Sahara ("ISIS-GS"), a designated FTO. The media note announcing the reward, available at https://www.state.gov/rewards-for-justice-reward-offer-for-those-involved-in-the-2017-tongo-tongo-ambush-in-niger/, states, among other things, that, "ISIS-GS claimed responsibility for the October 2017 ambush of a joint U.S.-Nigerien patrol near the village of Tongo Tongo, Niger, which resulted in the deaths of four U.S. soldiers."

On November 7, 2019, the State Department announced an RFJ program reward offer of up to $6 million and $4 million, respectively, for information on Sa'ad bin Atef al-Awlaki and Ibrahim Ahmed Mahmoud al-Qosi, two senior al-Qa'ida in the Arabian Peninsula ("AQAP") leaders. The media note making the announcement, which is available at https://www.state.gov/reward-offers-for-information-on-senior-leaders-of-al-qaida-in-the-arabian-peninsula/, also includes the following background:

> Al-Awlaki is the emir of Shabwah, a province in Yemen. He has publicly called for attacks against the United States and our allies. Al-Qosi, also known as Sheikh Khubayb al-Sudani and Mohammad Salah Ahmad, is part of the leadership team that assists the current "emir" of AQAP. Since 2015, he has appeared in AQAP recruiting materials and encouraged lone wolf attacks against the United States in online propaganda. Al-Qosi was born in Sudan. He joined AQAP in 2014, but has been active in al-Qa'ida for decades and worked directly for Usama bin Laden for many years. Al-Qosi was captured in Pakistan in December 2001 before being transferred to Guantanamo Bay. He pleaded guilty in 2010 before a military commission to conspiring with al-Qa'ida and providing material support to terrorism. The United States released al-Qosi and returned him to Sudan in 2012 pursuant to a pretrial agreement.

More information about these reward offers is available on the Rewards for Justice website at www.rewardsforjustice.net.

2. Narcotics

a. Majors List Process

(1) International Narcotics Control Strategy Report

On March 28, 2019, the Department of State submitted the 2019 International Narcotics Control Strategy Report ("INCSR"), an annual report to Congress required by § 489 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2291h(a). The report describes the efforts of foreign governments to address all aspects of the international drug trade in calendar year 2018. Volume 1 of the report covers drug and chemical control activities and Volume 2 covers money laundering and financial crimes. The full text of the 2019 INCSR is available at https://www.state.gov/2019-international-narcotics-control-strategy-report/.

(2) Major Drug Transit or Illicit Drug Producing Countries

On August 8, 2019, the White House issued Presidential Determination No. 2019–22 "Memorandum for the Secretary of State: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2020." 84 Fed. Reg.

44,679 (Aug. 27, 2019). In this year's determination, the President named 22 countries as countries meeting the definition of a major drug transit or major illicit drug producing country: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela. A country's presence on the "Majors List" is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. The President determined that Bolivia and the Maduro regime in Venezuela "failed demonstrably" during the last twelve months to make sufficient or meaningful efforts to adhere to their obligations under international counternarcotics agreements. Simultaneously, the President determined that support for programs that support the legitimate interim government in Venezuela are vital to the national interests of the United States, thus ensuring that such U.S. assistance would not be restricted during fiscal year 2020 by virtue of § 706(3) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1424.

b. Interdiction Assistance

On July 19, 2019, the President of the United States again certified, with respect to Colombia (Presidential Determination No. 2019-14, 84 Fed. Reg. 38,109 (Aug. 5, 2019)), that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which includes effective means to identify and warn an aircraft before the use of force is directed against the aircraft. President Trump made his determination pursuant to § 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended, 22 U.S.C. §§ 2291–4. For background on § 1012, see *Digest 2008* at 114.

c. U.S. Participation in Multilateral Actions

(1) UN Commission on Narcotic Drugs

At the 62nd session of the UN Commission on Narcotic Drugs, the participating government representatives adopted a declaration on "Strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem." The statement follows up on the 2009 Political Declaration and Plan of Action and the 2016 Thirtieth UN General Assembly Special Session on the World Drug Problem. Excerpts follow from the 2019 ministerial declaration.

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* * * *

We reaffirm our shared commitment to effectively address and counter the world drug problem, which requires concerted and sustained action at the national and international levels, including accelerating the implementation of existing drug policy commitments;

We reaffirm our commitment to effectively address and counter the world drug problem in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights, with full respect for the sovereignty and territorial integrity of States the principle of non-intervention in the internal affairs of States, all human rights, fundamental freedoms, the inherent dignity of all individuals and the principles of equal rights and mutual respect among States;

We reaffirm further our determination to address and counter the world drug problem and to actively promote a society free of drug abuse in order to help to ensure that all people can live in health, dignity and peace, with security and prosperity, and *reaffirm* our determination to address public health, safety and social problems resulting from drug abuse;

We reiterate our commitment to respecting, protecting and promoting all human rights, fundamental freedoms and the inherent dignity of all individuals and the rule of law in the development and implementation of drug policies;

We underscore that the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and other relevant instruments constitute the cornerstone of the international drug control system, *welcome* the efforts made by States parties to comply with the provisions and ensure the effective implementation of those conventions, and *urge* all Member States that have not yet done so to consider taking measures to ratify or accede to those instruments;

We emphasize that the 2009 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, the Joint Ministerial Statement of the 2014 high-level review by the Commission on Narcotic Drugs of the implementation by Member States of the Political Declaration and Plan of Action and the outcome document of the thirtieth special session of the General Assembly on the world drug problem, entitled "Our joint commitment to effectively addressing and countering the world drug problem", represent the commitments made by the international community over the preceding decade to addressing and countering, in a balanced manner, all aspects of demand reduction and related measures, supply reduction and related measures and international cooperation identified in the 2009 Political Declaration, as well as additional issues elaborated and identified in the UNGASS 2016 outcome document, and *recognize* that those documents are complementary and mutually reinforcing;

We recognize that there are persistent, new and evolving challenges that should be addressed in conformity with the three international drug control conventions, which allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law;

We reaffirm our commitment to a balanced, integrated, comprehensive, multi-disciplinary and scientific evidence-based approach to the world drug problem, based on the principle of common and shared responsibility and recognize the importance of appropriately mainstreaming a gender and age-perspective in drug-related policies and programmes, and that appropriate emphasis should be placed on individuals, families, communities and society as a

whole, with a particular focus on women, children and youth, with a view to promoting and protecting health, including access to treatment, safety and well-being of all humanity;

We reaffirm the principal role of the Commission on Narcotic Drugs as the policymaking body of the United Nations with prime responsibility for drug control matters, and our support and appreciation for the efforts of the relevant United Nations entities, in particular those of the United Nations Office on Drugs and Crime as the leading entity in the United Nations system for addressing and countering the world drug problem, and further reaffirm the treaty-mandated roles of the International Narcotics Control Board and the World Health Organization;

We reiterate our resolve, in the framework of existing policy documents, to, inter alia, prevent, significantly reduce and work towards the elimination of the illicit crop cultivation, production, manufacture, trafficking in and abuse of narcotic drugs and psychotropic substances, including synthetic drugs and new psychoactive substances, as well as to prevent, significantly reduce and work towards the elimination of the diversion of and illicit trafficking in precursors, and money-laundering related to drug-related crimes; to ensure the access and availability of controlled substances for medical and scientific purposes, including for the relief of pain and suffering, and address existing barriers in this regard, including affordability; to strengthen effective, comprehensive, scientific evidence-based demand reduction initiatives, covering prevention, early intervention, treatment, care, recovery, rehabilitation and social re-integration measures on a non-discriminatory basis, as well as, in accordance with national legislation, initiatives and measures aimed at minimizing the adverse public health and social consequences of drug abuse; to address drug-related socioeconomic issues related to the illicit crop cultivation, production and manufacture of and trafficking in drugs, including through the implementation of long-term comprehensive and sustainable development-oriented and balanced drug control policies and programmes; to promote, consistent with the three international drug control conventions and domestic law, and in accordance with national, constitutional, legal and administrative systems, alternative or additional measures with regard to conviction or punishment in cases of appropriate nature;

We express deep concern at the high price paid by society and by individuals and their families as a result of the world drug problem, and pay special tribute to those who have sacrificed their lives, and those who dedicate themselves to addressing and countering the world drug problem;

We underscore the important role played by all relevant stakeholders, including law enforcement, judicial and health-care personnel, civil society, the scientific community and academia, as well as the private sector, supporting our efforts to implement our joint commitments at all levels, and underscore the importance of promoting relevant partnerships;

We reiterate that efforts to achieve the Sustainable Development Goals and to effectively address the world drug problem are complementary and mutually reinforcing;

STOCK TAKING

Bearing in mind the biennial reports of the Executive Director of the United Nations Office on Drugs and Crime on progress made by Member States with the implementation of the 2009 Political Declaration and Plan of Action, the annual World Drug Reports, the annual reports of the International Narcotics Control Board, and highlighting the experiences, lessons learnt, and good practices in the implementation of the joint commitments shared by Member States and other stakeholders during its annual sessions as well as the thematic sessions held during the 60th and 61st session of the Commission on Narcotic Drugs;

We acknowledge that tangible progress has been achieved in the implementation of the commitments made over the past decade, in addressing and countering the world drug problem including with regard to an improved understanding of the problem; the development, elaboration and implementation of national strategies, enhanced sharing of information, as well as enhanced capacity of national competent authorities;

We note with concern persistent and emerging challenges related to the world drug problem, including the following: that both the range of drugs and drugs markets are expanding and diversifying; that the abuse, as well as the illicit cultivation and production of narcotic drugs and psychotropic substances, as well as the illicit trafficking in those substances and in precursors have reached record levels, and that the illicit demand for and domestic diversion in precursor chemicals is on the rise; that increasing links between drug trafficking, corruption and other forms of organized crime, including trafficking in persons, trafficking in firearms, cybercrime and money-laundering, and, in some cases, terrorism, including money-laundering in connection with the financing of terrorism, are being observed; that the value of confiscated proceeds of crime related to money laundering arising from drug trafficking at the global level remains low, that the availability of internationally controlled substances for medical and scientific purposes, including for the relief of pain and palliative care, remains low to non-existent in many parts of the world; that drug treatment and health services continue to fall short of need, and deaths related to drug use have increased; and that the rate of transmission of HIV, HCV and other blood borne diseases associated with drug use, including injecting drugs, in some countries, remains high; that the adverse health consequences and risks associated with new psychoactive substances have reached alarming levels; synthetic opioids, and the non-medical use of prescription drugs present increasing risks to public health and safety, as well as with scientific, legal and regulatory challenges, including in scheduling of substances; that the criminal misuse of information and communications technologies for illicit drug-related activities is increasing; and that the geographical coverage and availability of reliable data on the various aspects on the world drug problem requires improvement; and that responses not in conformity with the three international drug control conventions and not in conformity with applicable international human rights obligations represent a challenge to the implementation of joint commitments based on the principle of common and shared responsibility; and to that end:

WAY FORWARD

We commit to safeguard our future and ensure that no one affected by the world drug problem is left behind by enhancing our efforts to bridge the gaps in addressing the persistent and emerging trends and challenges through the implementation of balanced, integrated, comprehensive, multi-disciplinary and scientific evidence-based responses to the world drug problem, placing the safety, health and well-being of all members of society, in particular of our youth and children, at the centre of our efforts;

We commit to accelerate, based on the principle of common and shared responsibility, the full implementation of the 2009 Political Declaration and Plan of Action, the 2014 Joint Ministerial Statement and the 2016 UNGASS outcome document, aimed at achieving all commitments, operational recommendations and aspirational goals set therein;

We commit to strengthen further cooperation and coordination among national authorities, particularly in the health, education, social, justice and law enforcement sectors, and between governmental agencies and other relevant stakeholders, including the private sector, at all levels, including through technical assistance;

We commit to strengthen bilateral, regional and international cooperation, and promote information sharing, in particular among judiciary and law enforcement authorities to respond to the serious challenges posed by the increasing links between drug trafficking, corruption and other forms of organized crime, including trafficking in persons, trafficking in firearms, cybercrime and money laundering, and, in some cases, terrorism, including money-laundering in connection with the financing of terrorism; as well as to effectively identify, trace, freeze, seize, and confiscate assets and proceeds of drug-related crime and ensure their disposal, including sharing, in accordance with the 1988 Convention, and, as appropriate, their return, consistent with the UNCAC and UNTOC;

We commit to continue to mobilize resources, including for the provision of technical assistance and capacity-building at all levels, to ensure that all Member States can effectively address and counter emerging and persistent drug related challenges;

We commit to increase the provision of technical assistance and capacity-building to Member States, upon request in particular those most affected by the world drug problem, including by illicit cultivation and production, transit and consumption;

We commit to support the Commission on Narcotic Drugs to continue, within its mandate as the principal policymaking body of the UN with prime responsibility for drug control matters, including but not limited to, foster broad, transparent and inclusive discussions within the CND, involving, as appropriate, all relevant stakeholders, such as, law enforcement, judicial and health care personnel, civil society, academia, and relevant UN entities, on effective strategies to address and counter the world drug problem at all levels, including through sharing of information, best practices and lessons learnt;

We commit to strengthen the work of CND with WHO and INCB, within their treaty-based mandates, as well as with UNODC, to continue to facilitate informed scheduling decisions on the most persistent, prevalent, and harmful substances, including synthetic drugs and new psychoactive substances, precursors, chemicals and solvents, while ensuring their availability for medical and scientific purposes; as well as strengthen the dialogue of the CND with the INCB on the implementation of the three international drug control conventions and with relevant international organizations;

We commit to ensure that the CND-led follow-up on the implementation of all commitments to address and counter the world drug problem made since 2009 is done in a single track, which entails,

- devoting a single standing agenda item at each regular session of the Commission on the implementation of all commitments;
- ensuring that collection of reliable and comparable data, through strengthened and streamlined ARQ, reflects all commitments; and
- requesting the Executive Director of the United Nations Office on Drugs and Crime to adapt the existing biennial report into a single report, on a biennial basis, within existing resources, and based on the responses provided by MS to the strengthened and streamlined ARQ, on progress made to implement all commitments at the national, regional and international levels, the first of which should be submitted for consideration by the Commission, at its 65th session in 2022*;*

We commit to promote and improve the collection, analysis and sharing of quality and comparable data, in particular through targeted, effective and sustainable capacity building, in close cooperation with, INCB, WHO, as well as UNODC and other relevant partners, including through the cooperation between the CND and the Statistical Commission, with a view to

strengthening national data collection capacity in order to improve response rate and expand the geographical and thematic reporting of related data in accordance with all commitments; *We request* the United Nations Office on Drugs and Crime, in close cooperation with Member States, to continue, in an inclusive manner, expert level consultations on strengthening and streamlining existing annual reporting questionnaire and reflect on possibilities to review other existing drug control data collection and analysis tools as deemed necessary to reflect and assess progress made in the implementation of all commitments, included in the Political Declaration and Plan of Action 2009, the 2014 Joint Ministerial Statement and the UNGASS 2016 outcome document, and to submit an improved and streamlined annual reporting questionnaire for consideration at the 63rd session of the Commission, subject to the availability of extrabudgetary resources;

We request the United Nations Office on Drugs and Crime to continue to provide enhanced technical and substantive support to the Commission on Narcotic Drugs in supporting the implementation of and conducting follow-up to all commitments, subject to the availability of extrabudgetary resources;

We further request the United Nations Office on Drugs and Crime, to enhance technical assistance and capacity building for the implementation of all commitments in consultation with requesting Member States and in cooperation with other relevant United Nations entities and stakeholders and invite existing and emerging donors to provide extrabudgetary resources for this purpose;

We encourage further contributions of relevant United Nations entities, international financial institutions and relevant regional and international organizations, within their respective mandates, to the work of the Commission and the efforts of Member States to address and counter the world drug problem, upon their request, to strengthen international and inter-agency cooperation, and also encourage them to make available relevant information to the Commission in order to facilitate its work and to enhance coherence within the United Nations system at all levels with regard to the world drug problem;

Following-up to this Ministerial Declaration, we resolve, to review in the Commission on Narcotic Drugs in 2029 our progress in implementing all our international drug policy commitments, with a mid-term review in the Commission on Narcotic Drugs in 2024;

* * * *

3. Trafficking in Persons

a. Trafficking in Persons Report

In June 2019, the Department of State released the 2019 Trafficking in Persons Report pursuant to § 110(b)(1) of the Trafficking Victims Protection Act of 2000 ("TVPA"), Div. A, Pub. L. No. 106-386, 114 Stat. 1464, as amended, 22 U.S.C. § 7107. The report covers the period April 2018 through March 2019 and evaluates the anti-trafficking efforts of countries around the world. Through the report, the Department determines the ranking of countries as Tier 1, Tier 2, Tier 2 Watch List, or Tier 3 based on an assessment of their efforts with regard to the minimum standards for the elimination of trafficking in persons as set out by the TVPA, as amended. The 2019 report lists 21 countries as Tier 3 countries, making them subject to certain restrictions on assistance in the absence of

a Presidential national interest waiver. For details on the Department of State's methodology for designating states in the report, see *Digest 2008* at 115–17. The report is available at https://www.state.gov/reports/2019-trafficking-in-persons-report/. Chapter 6 in this *Digest* discusses the determinations relating to child soldiers.

On June 20, 2019 Secretary Pompeo delivered remarks at the 2019 ceremony announcing the release of the 2019 Trafficking in Persons Report. Secretary Pompeo's remarks are excerpted below and available at https://www.state.gov/secretary-of-state-michael-r-pompeo-at-the-2019-trafficking-in-persons-report-launch-ceremony/.

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... [O]ur report reveals the grim reality: there are 25 million adults and children suffering from labor and sex trafficking all over the world—including in the United States and, indeed, in this very city in which we're sitting here today.

It's a strain. Human trafficking is a stain as well on all of humanity. We detest it because it flagrantly violates the unalienable rights that belong to every human being.

Every person, everywhere, is inherently vested with profound, inherent, equal dignity. America was founded on a promise to defend those rights—including life, liberty, and the pursuit of justice. But too often we've fallen short, and we cannot fall short on this challenge.

Human rights trafficking is not a natural disaster. It's caused by man. And therefore, we have the capacity to solve this. And I hope that this report helps each us know the way to achieve this.

You'll see that the focus of the 2019 TIP Report is to encourage governments to address forms of human trafficking occurring within their country's own borders.

That may seem surprising to many of you. Indeed, I think one of the biggest misperceptions about human trafficking is it's always transnational. It's not the case. Every individual and every individual country must confront this challenge on its own sovereign territory. Because in reality said traffickers exploit an estimated 77 percent of victims in their own home country.

Human trafficking is a local and a global problem. Shockingly, many victims never leave their hometowns. I think the focus of this report appropriately reflects that challenge.

National governments must empower local communities to identify and address trafficking in specific forms prevalent in the areas in which they live.

The report identifies a few success stories too, like Senegal, where the government identified a growing problem of child begging rings, ran campaigns to raise awareness among the public, convicted perpetrators, and provided care to many, many victims.

The report commends those countries that have taken action, nations like Senegal, as well as Mongolia, the Philippines, Tajikistan, and others. But we also call out those nations that aren't doing enough.

Tier 3 designations—the lowest possible designation—were given once again to China, Iran, North Korea, Russia, Syria, and Venezuela, among others. A few countries were added to the Tier 3 list, including Cuba.

Some of these governments allow human traffickers to run rampant, and other governments are human traffickers themselves.

In North Korea, the government subjects its own citizens to forced labor both at home and abroad and then uses proceeds to fund nefarious activities.

In China, authorities have detained more than a million members of ethnically Muslim minority groups in internment camps. Many are forced to produce garments, carpets, cleaning supplies, and other goods for domestic sale.

These designations—Tier 1, 2, 3—aren't just words on paper. They carry consequences. Last year, President Trump restricted certain types of assistance to 22 countries that were ranked for Tier 3 in our 2018 TIP Report.

* * * *

b. Presidential Determination

Consistent with § 110(c) of the Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7107, the President annually submits to Congress notification of one of four specified determinations with respect to "each foreign country whose government, according to [the annual Trafficking in Persons report]—(A) does not comply with the minimum standards for the elimination of trafficking; and (B) is not making significant efforts to bring itself into compliance." The four determination options are set forth in § 110(d)(1)–(4).

On October 18, 2019, the President issued a memorandum for the Secretary of State, "Presidential Determination With Respect to the Efforts of Foreign Governments Regarding Trafficking in Persons." 84 Fed. Reg. 59,521 (Nov. 4, 2019). The President's memorandum conveys determinations concerning the countries that the 2019 Trafficking in Persons Report lists as Tier 3 countries. See Chapter 3.B.3.a., *supra*, for discussion of the 2019 report.

4. Money Laundering

On October 30, 2019, the State Department issued a press statement welcoming actions by the Financial Action Task Force ("FATF") regarding Iran's money laundering and financing of terrorism. The State Department had previously welcomed earlier FATF actions requiring increased supervision of Iran-based financial institutions, in a June 21, 2019 statement, available at https://www.state.gov/statement-on-the-imposition-of-financial-countermeasures-on-iran/, not excerpted herein. The October 30, 2019 State Department press statement is available at https://www.state.gov/u-s-welcomes-fatf-measures-to-protect-international-financial-system-from-iranian-threats/ and includes the following:

> The United States welcomes the Financial Action Task Force's (FATF) recent re-imposition of additional countermeasures on Iran for its failure to uphold international anti-money laundering and countering the financing of terrorism (AML/CFT) standards. Iran has shown a willful failure to address its systemic AML/CFT deficiencies, deliberately ensuring there is no transparency in its

> economy so it can continue to export terrorism. The Islamic Revolutionary Guard Corps (IRGC) continues to engage in large-scale, illicit, financing schemes to fund its malign activities. This includes support for U.S.-designated terrorist groups like Hizballah and Hamas. The IRGC's illicit financing schemes are facilitated at the highest levels of Iran's government. The IRGC controls much of Iran's economy, and companies around the world should err on the side of caution to avoid financing Iran's malign activities.
>
> The international community has made clear that Iran must live up to its commitments to behave like a normal nation. The FATF warned Iran that it must ratify the Palermo and Terrorist Financing Conventions in line with FATF standards by February 2020, or the FATF will fully re-impose countermeasures. We support FATF's decision to protect the international financial system and call on FATF members to hold Iran fully accountable for its serious and continuing acts of terrorism and terror finance.

Effective November 14, 2019, the Department of the Treasury issued a rule prohibiting the opening or maintaining of correspondent accounts in the United States for, or on behalf of, Iranian financial institutions, and the use of foreign financial institutions' correspondent accounts at covered U.S. financial institutions to process transactions involving Iranian financial institutions. 84 Fed. Reg. 59,302 (Nov. 4, 2019). Treasury's Financial Crimes Enforcement Network ("FinCEN") issued the final rule pursuant to Section 311 of the USA PATRIOT Act, Pub. L. 107-56, based on finding the Islamic Republic of Iran to be a "Jurisdiction of Primary Money Laundering Concern." *Id*. The FinCEN measures imposed by the United States in November 2019 make reference to FATF steps, discussed *supra*, and both FinCEN and FATF were responding to the same failures by the government of Iran. Excerpts follow (with footnotes omitted) from the Federal Register notice announcing FinCEN's imposition of the measure, specifically, the section summarizing the finding of Iran to be a "Jurisdiction of Primary Money Laundering Concern." *Id*. at 59,304-10. For discussion of the humanitarian mechanism regarding Iran to increase transparency of permissible support for the Iranian people, which was announced by the U.S. State and Treasury departments concurrently with the FinCEN finding regarding Iran, see Chapter 16.

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Based on information available to FinCEN, including both public and non-public reporting, and after considering the factors listed in the 311 statute and performing the requisite interagency consultations with the Secretary of State and Attorney General as required by 31 U.S.C. 5318A(c)(1), FinCEN finds that reasonable grounds exist for concluding that Iran is a jurisdiction of primary money laundering concern. …

Iran's Abuse of the International Financial System

Iran has developed covert methods for accessing the international financial system and pursuing its malign activities, including misusing banks and exchange houses, operating procurement networks that utilize front or shell companies, exploiting commercial shipping, and masking illicit transactions using senior officials, including those at the Central Bank of Iran (CBI). Iran has also used precious metals to evade sanctions and gain access to the financial system, and may in the future seek to exploit virtual currencies. These efforts often serve to fund the Islamic Revolutionary Guard Corps (IRGC), its Islamic Revolutionary Guard Corps Qods Force (IRGC–QF), Lebanese Hizballah (Hizballah), Hamas, the Taliban and other terrorist groups.

Factor 1…

a. Role of CBI Officials in Facilitating Terrorist Financing

Senior CBI officials have played a critical role in enabling illicit networks, using their official capacity to procure hard currency and conduct transactions for the benefit of the IRGC–QF and its terrorist proxy groups. The CBI has been complicit in these activities, including providing billions of U.S. dollars (USD) and euros to the IRGC–QF, Hizballah and other terrorist organizations. Since at least 2016, the CBI has provided the IRGC–QF with the vast majority of its foreign currency. During 2018 and early 2019, the CBI transferred several billion USD and euros from the Iranian National Development Fund (NDF) to the IRGC–QF.

In September 2019, Treasury designated the CBI and NDF under its counterterrorism authority, Executive Order (E.O.) 13224, as amended by E.O. 13886. The Iranian government established the NDF to serve the welfare of the Iranian people by allocating revenues from oil and gas sales to economic investments, but has instead used the NDF as a slush fund for the IRGC–QF, for years disbursing hundreds of millions of USD in cash to the IRGC–QF. In coordination with the CBI, the NDF provided the IRGC–QF with half a billion USD in 2017 and hundreds of millions of USD in 2018.

In November 2018, Treasury designated nine persons—including two CBI officials—involved in an international network through which Iran provided millions of barrels of oil to Syria via Russian companies, in exchange for Syria's facilitation of the movement of hundreds of millions of USD to the IRGC–QF, for onward transfer to Hizballah and Hamas. The designations highlighted, as the Secretary stated, that "[CBI] officials continue to exploit the international financial system, and in this case even used a company whose name suggests a trade in humanitarian goods as a tool to facilitate financial transfers supporting this oil scheme."

The scheme was centered on Syrian national Mohammad Amer Alchwiki and his Russia-based company, Global Vision Group. Global Vision worked with Russian state-owned company Promsyrioimport to facilitate shipments of Iranian oil to Syria. To assist the Bashar Al-Assad regime in paying Russia for this service, Iran sent funds to Russia through Alchwiki and Global Vision. To conceal its involvement, the CBI made payments to Mir Business Bank using Iran-based Tadbir Kish Medical and Pharmaceutical Company. Following the CBI's transfer of funds from Tadbir Kish to Global Vision, Global Vision transferred payments to Promsyrioimport.

CBI senior officials were crucial to the scheme's success. CBI International Department Director Rasul Sajjad and CBI Vice Governor for International Affairs Hossein Yaghoobi both assisted in facilitating Alchwiki's transfers. First Deputy Director of Promsyrioimport Andrey Dogaev worked closely to coordinate the sale of Iranian crude oil to Syria with Yaghoobi, who has a history of working with Hizballah in Lebanon and has coordinated financial transfers to Hizballah with IRGC–QF and Hizballah personnel. Using this scheme, the network exported

millions of barrels of Iranian oil into Syria, and funneled millions of USD between the CBI and Alchwiki's Mir Bank account in Russia.

Separately, in May 2018, in connection with a scheme to move millions of USD for the IRGC–QF, Treasury designated the then-governor of the CBI, Valiollah Seif, the assistant director of CBI's international department, Ali Tarzali, Iraq-based al-Bilad Islamic Bank, Aras Habib, Al-Bilad's Chairman and Chief Executive, and Muhammad Qasir, a Hizballah official. Treasury designated them as Specially Designated Global Terrorists (SDGTs) pursuant to E.O. 13224. Treasury stated that Seif had covertly funneled millions of USD on behalf of the IRGC–QF through al-Bilad Bank to support Hizballah's radical agenda, an action that undermined the credibility of his commitment to protecting CBI's integrity.

Also in May 2018, Treasury, in a joint action with the United Arab Emirates (UAE), designated nine Iranian individuals and entities involved in an extensive currency exchange network that was procuring and transferring millions in USD-denominated bulk cash to the IRGC–QF to fund its malign activities and regional proxy groups. The CBI was complicit in the IRGC–QF's scheme, actively supported the network's currency conversion, and enabled it to access funds that it held in its foreign bank accounts.

The CBI and senior CBI officials have a history of using exchange houses to conceal the origin of funds and procure foreign currency for the IRGC–QF. During periods of heightened sanctions pressures, Iran has relied heavily on third-country exchange houses and trading companies to move funds to evade sanctions. Iran uses them to act as money transmitters in processing funds transfers through the United States to third-country beneficiaries, in support of business with Iran that is in violation of U.S. sanctions targeting Iran. These third-country exchange houses or trading companies frequently lack their own U.S. Dollar accounts and instead rely on the correspondent accounts of their regional banks to access the U.S. financial system.

Additionally, according to information provided to FinCEN, in 2017, the CBI coordinated with Hizballah to arrange a single EUR funds transfer to a Turkish bank worth over $50 million USD.

b. IRGC's Abuse of the International Financial System

Iran is the world's leading state sponsor of terrorism, providing material support to numerous Treasury-designated terrorist groups, including Hizballah, Hamas, and the Taliban, often via its IRGC–QF. The IRGC–QF is an elite unit within the IRGC, the military and internal security force created after the Islamic Revolution. IRGC–QF personnel advise and support pro-Iranian regime factions worldwide, including several which, like Hizballah, Hamas, and the Taliban, the United States has similarly designated as terrorists.

Treasury has designated the IRGC pursuant to several E.O.s: E.O. 13382 in connection with its support to Iran's ballistic missile and nuclear programs; E.O. 13553 for serious human rights abuses by the Iranian government; E.O. 13606 in connection with grave human rights abuses; E.O. 13224 for global terrorism, and consistent with the Countering America's Adversaries Through Sanctions Act, for its support of the IRGC–QF. Treasury has designated the IRGC–QF pursuant to E.O. 13224 for providing material support to terrorist groups, including the Taliban, E.O. 13572 for support to the Syrian General Intelligence Directorate, the Assad regime's civilian intelligence service, and E.O. 13553 for serious human rights abuses by the Iranian government.

In April 2019, the State Department designated the IRGC, including the IRGC–QF, as a Foreign Terrorist Organization (FTO). It was the first time that the United States designated a

part of another government as an FTO—an action that highlighted Iran's use of terrorism as a central tool of its statecraft and an essential element of its foreign policy. The IRGC is integrally woven into the Iranian economy, operating institutions and front companies worldwide, so that the profits from seemingly legitimate business deals may actually fund Iranian terrorism.

The IRGC–QF's misuse of the international financial system to enable its nefarious activities include numerous examples that have occurred in the United States. In May 2018, the United States and the UAE took joint action to disrupt an extensive currency exchange network that was procuring and transferring millions in USD- denominated bulk cash to the IRGC–QF to fund its malign activities and regional proxy groups. Treasury designated nine Iranian individuals and entities, and noted that key CBI officials supported the transfer of funds.

On November 5, 2018, in connection with the re-imposition of U.S. nuclear-related sanctions that had been lifted or waived under the JCPOA, Treasury sanctioned over 700 individuals, entities, aircraft, and vessels in its largest ever single-day action targeting Iran. The action included the designations of more than 70 Iran-linked financial institutions and their foreign and domestic subsidiaries. Bank Melli was among those banks designated pursuant to E.O. 13224 for assisting in, sponsoring, or providing financial, material, or technological support for, or other services to or in support of, the IRGC–QF. As of 2018, the equivalent of billions of USD in funds had transited IRGC–QF controlled accounts at Bank Melli. Moreover, Bank Melli had enabled the IRGC and its affiliates to move funds into and out of Iran, while the IRGC–QF, using Bank Melli's presence in Iraq, had used Bank Melli to pay Iraqi Shia militant groups. On November 20, 2018, Treasury designated nine individuals and entities in an international network through which the Iranian regime worked with Russian companies to provide millions of barrels of oil to the Assad regime in Syria. The Assad regime, in turn, facilitated the movement of hundreds of millions of USD to the IRGC–QF for onward transfer to Hamas and Hizballah.25

In March 2019, Treasury took action against 25 individuals and entities, including a network of Iran, UAE, and Turkey-based front companies that transferred over a billion USD and euros to the IRGC, IRGC–QF and Iran's Ministry of Defense and Armed Forces Logistics (MODAFL). The action included a designation of Ansar Bank, an Iranian bank controlled by the IRGC, and its currency exchange arm, Ansar Exchange, for providing banking services to the IRGC–QF.

In June 2019, Treasury designated an Iraq-based IRGC–QF financial conduit, South Wealth Resources Company (SWRC), which trafficked hundreds of millions of U.S. dollars' worth of weapons to IRGC–QF-backed militias. SWRC and its two Iraqi associates covertly facilitated the IRGC–QF's access to the Iraqi financial system to evade sanctions, while also generating profits in the form of commission payments for a Treasury-designated advisor to the IRGC–QF's commander, Qasem Soleimani. Soleimani has run weapons smuggling networks, participated in bombings of Western embassies, and attempted assassinations in the region.

Iran's activities include acts of attempted violence in the United States. In October 2011, pursuant to E.O. 13224, Treasury designated four senior IRGC–QF officers and Mansoor Arbabsiar, a naturalized U.S. citizen, for plotting to assassinate the Saudi Arabian Ambassador to the United States. In an example that laid bare the risks financial institutions take when transacting with Iran, payment for the assassination reached Arbabsiar from Tehran via two wire transfers totaling approximately $100,000 USD, sent from a non-Iranian foreign bank to a U.S. bank.

c. Iranian Support to Terrorists Hizballah

Despite its attempts to portray itself as a legitimate political entity, Hizballah is first and foremost a terrorist organization, responsible for the most American deaths by terrorism prior to the September 11, 2001 terrorist attacks. …Iran provides upwards of $700 million USD annually toward Hizballah's estimated $1 billion USD budget.

Hizballah is listed in the annex to E.O. 12947 from January 1995, "Prohibiting Transactions With Terrorists Who Threaten to Disrupt The Middle East Peace Process." The State Department designated Hizballah in October 1997 as an FTO and in October 2001 as an SDGT pursuant to E.O. 13224. Treasury issued additional sanctions against Hizballah in August 2012 pursuant to E.O. 13582 (which targets the government of Syria and its supporters) specifically in connection with Hizballah's efforts to coordinate with the IRGC–QF in support of the Assad regime. At the request of the IRGC–QF, Hizballah has deployed thousands of fighters into Syria in support of the Assad regime.

As recently as September 2019, Treasury took action against a large shipping network directed by and financially supporting both the IRGC–QF and Hizballah. In the past year, the IRGC–QF has moved Iranian oil worth at least hundreds of millions of USD through the network for the benefit of the Assad regime and other illicit actors. The sprawling network uses dozens of ship managers, vessels, and other facilitators and intermediaries to enable the IRGC–QF to obfuscate its involvement; to broker associated contracts, it also relies heavily on front companies and Hizballah officials (including Muhammad Qasir, designated by Treasury in November 2018 in connection with the illicit Russia-Iran oil network supporting Assad, Hizballah, and Hamas). Pursuant to E.O. 13224, Treasury identified several vessels as property in which blocked persons have an interest, and pursuant to E.O. 13224, designated 16 entities and 10 individuals, including senior IRGC–QF official and former Iranian Minister of Petroleum Rostam Qasemi, who oversees the network. Treasury Under Secretary for Terrorism and Financial Intelligence Sigal Mandelker noted that the designations demonstrated Iran's economic reliance on the terrorist groups IRGC–QF and Hizballah as financial lifelines.

In July 2019, Treasury designated key Hizballah political and security figures—two members of Lebanon's Parliament and one Hizballah security official—who were leveraging their positions to facilitate Hizballah's agenda and do Iran's bidding. … Also in July 2019, Treasury designated Salman Raouf Salman pursuant to E.O. 13224. Salman, a senior member of an Hizballah organization dedicated to carrying out attacks outside Lebanon, coordinated the devastating attack in 1994 against the AMIA Jewish community center in Buenos Aires, Argentina, and has been directing terrorist operations in the Western Hemisphere ever since. The designation of Salman marked over 50 Hizballah-linked designations by Treasury since 2017.

Hizballah is a global terrorist organization, active in Syria, Iraq, and Yemen, and Hizballah plots have been thwarted in South America, Asia, Europe, and the United States. …

According to information available to FinCEN, in early 2015, the IRGC–QF provided approximately $20 million USD to Hizballah, over half of which was to be used for ballistic missile expenses. In 2017, the CBI coordinated with Hizballah to arrange a single EUR funds transfer to a Turkish bank worth over $50 million USD.

More recently, and as noted in the previous section, in November 2018, Treasury designated nine persons involved in an international network through which Iran provided millions of barrels of oil to Syria via Russian companies …

Also as noted previously, in May 2018, in connection with a scheme to move millions of USD for the IRGC–QF, Treasury designated a network that included Valiollah Seif, Iran's then-

governor of the CBI, Iraq-based al-Bilad Islamic Bank, and Muhammad Qasir, a Hizballah official. …

Hamas

Iran also has a history of supporting Hamas. …

Iran provides Hamas with funds, weapons, and training. During periods of substantial Iran-Hamas collaboration, Iran's support to Hamas has been estimated to be as high as $300 million USD per year, but at a baseline amount, is widely assessed to be in the tens of millions per year. …

According to information available to FinCEN, in March 2015, Hamas expressed gratitude for Iran's previous financial support, and requested that Iran resume providing aid. In January 2016, Hamas officials in Gaza were awaiting monetary payments from the IRGC–QF. The Hamas officials expected the Iranian government to transfer money to the IRGC–QF in Beirut, who would then transfer it onward to them. Additionally, in 2016, Hamas had received a significant sum of IRGC–QF funding via financiers in Turkey.

In August 2019, Treasury, in partnership with the Sultanate of Oman, designated financial facilitators who funneled tens of millions of USD between the IRGC–QF and Hamas's operational arm, the Izz-Al-Din Al-Qassam Brigades, for terrorist attacks originating from Gaza. The Izz-Al-Din Al-Qassam Brigades is a designated FTO and SDGT. … The IRGC–QF transferred over $200 million USD to the Izz-Al-Din Al-Qassam Brigades in the past four years.

In September 2019, in an action targeting a wide range of terrorists and their supporters using enhanced counterterrorism sanctions authorities, Treasury designated two Iran-linked Hamas officials.

Taliban

Iran seeks influence in Afghanistan in a number of ways, including by offering economic assistance and engaging the central government—but also by arming Taliban fighters and supporting pro-Iranian groups. In October 2010, then-President Hamid Karzai admitted that Iran was providing about $2 million USD annually in cash payments to his government. Treasury designated the Taliban as an SDGT in 2002.

In October 2018, the seven member nations of the Terrorist Financing Targeting Center (TFTC), designated nine Taliban-associated individuals, including those facilitating Iranian support to bolster the Taliban. The Secretary described Iran's provision of support to the Taliban as yet another example of its support for terrorism, and its utter disregard for United Nations Security Council Resolutions (UNSCRs) and other international norms. Treasury noted that the action's inclusion of IRGC–QF members supporting Taliban elements highlighted the scope of Iran's regionally destabilizing behavior.

Among those designated were Mohammad Ebrahim Owhadi, an IRGC–QF officer, and Abdullah Samad Faroqui, the Taliban Deputy Shadow Governor for Herat Province. In 2017, Owhadi and Faroqui reached an agreement for the IRGC–QF's provision of military and financial assistance to Faroqui, in exchange for Faroqui's forces attacking the Afghan government in Herat. Also designated were Esma'il Razavi, who was in charge of the training center at the IRGC–QF base in Birjand, Iran, which as of 2014, provided training, intelligence, and weapons to Taliban forces in Farah, Ghor, Badhis, and Helmand Provinces, Afghanistan. In 2008, as the senior IRGC–QF official in Birjand, Razavi's base supported anti-coalition militants in Farah and Herat. Also designated by the TFTC were Naim Barich, previously Treasury- and UN-sanctioned, who as of late 2017 was the Taliban Shadow Minister of Foreign Affairs managing Taliban relations with Iran, and Sadr Ibrahim, the leader of the Taliban's Military

Commission, whom Iranian officials agreed to provide with financial and training support in order to build the Taliban's tactical and combat capabilities.

d. Entities Involved in the Proliferation of WMD or Missiles

Under UNSCR 2231 (2015), … the sale, supply, or transfer to Iran of Nuclear Suppliers Group (NSG) 45-controlled items requires advance approval by the UNSC. Despite this, in July 2019, Treasury identified and acted against a network of front companies and agents involved in procuring sensitive materials— including NSG-controlled materials— without UNSC approval for sanctioned elements of Iran's nuclear program. Treasury designated seven entities and five individuals in Iran, China, and Belgium, for acting as a procurement network for Iran's Centrifuge Technology Company, which plays a crucial role in Iran's uranium enrichment through the production of centrifuges for Atomic Energy Organization of Iran facilities.

Additionally, in August 2019, Treasury designated two Iranian regime-linked networks pursuant to E.O. 13382 for engaging in covert procurement activities benefiting multiple Iranian military organizations. One network has used a Hong Kong-based front company to evade U.S. and international sanctions and procure tens of millions of dollars' worth of U.S. technology and electronic components on behalf of the IRGC and Iran's missile program. The other network has procured NSG-controlled aluminum alloy products on behalf of MODAFL subsidiaries.

Iran's ongoing pursuit of ballistic missile technology is well known. …

In January 2018, two Iranian nationals tried to buy Kh-31 missile components in Kiev, Ukraine, which would have been a violation of the UN arms embargo on Iran. Ukraine's security service detained the men while they were in possession of the missile parts and technical documents on their use. Ukraine subsequently deported the men, one of whom was a military attaché at Iran's Embassy in Kiev.

According to information available to FinCEN, Iran's Shahid Bakeri Industrial Group (SBIG) and Shahid Hemmat Industrial Group (SHIG), respectively its solid and liquid propellant ballistic missile producers, utilize foreign entities and networks to procure missile-related materials and technology and disguise their involvement in the process. SBIG and SHIG are listed in the annex to E.O. 13382, which targets proliferators of WMD and their supporters. Among the targets in Treasury's August 2019 designation action was the Iranian firm Ebtekar Sanat Ilya, which helped procure more than one million dollars' worth of export-controlled, military-grade electronic components for Iranian military clients—including both SBIG and SHIG.

In February 2017, Treasury designated entities and individuals that were part of the Abdollah Asgharzadeh network in connection with their procurement of dual-use and other goods on behalf of organizations involved in Iran's ballistic missile program. The network coordinated procurement through intermediary companies that obfuscated the true end-user of the goods, and relied on the assistance of trusted brokers based in China.

Factor 2…

The endemic corruption of Iran's government is well-known. According to information available to FinCEN, in late 2017, IRGC officials were aware of corruption and mismanagement at an IRGC economic development firm. The officials estimated the cost of the corruption to be approximately $5.5 billion USD—a figure which represented losses, debts, and funds required for a capital injection to facilitate the firm's dissolution.

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Factor 3…

For more than a decade, the international community has been concerned about the deficiencies in Iran's anti-money laundering/countering the financing of terrorism (AML/CFT) program. As far back as October 11, 2007, the Financial Action Task Force (FATF) issued a statement on Iran's lack of a comprehensive AML/CFT regime, noting it represented a significant vulnerability in the international financial system. …

In June 2016, due to Iran's adoption of, and high-level political commitment to, an Action Plan to address its strategic AML/CFT deficiencies, the FATF agreed to suspend counter-measures for 12 months in order to monitor Iran's progress in implementing its Action Plan. At the same time however, the FATF expressed its continuing concern with the terrorist financing risk emanating from Iran and the threat this posed to the international financial system, and called for financial institutions to continue applying enhanced due diligence with respect to Iran-related business relationships and transactions. …

In its June 2019 and October 2019 Public Statements, the FATF noted that Iran's Action Plan had expired in January 2018 and that major items remained outstanding …

Due to these critical deficiencies, in June 2019, the FATF decided to call upon its members and urge all jurisdictions to increase supervisory examination for branches and subsidiaries of financial institutions based in Iran. …

A number of public statements from senior Iranian government officials suggest that Iran has no real intention of adhering to international norms, including the FATF standards. …

Factor 4…

The United States and Iran have not had a substantive relationship since the hostage-taking of U.S. Embassy personnel by Iranians in November 1979, and subsequent severing of diplomatic relations in April 1980.

… [N]o MLAT is in force with Iran. Additionally, the Egmont Group is an international organization through which many countries' financial intelligence units (FIUs) share invaluable financial and other information useful in law enforcement and regulatory investigations. As the U.S. FIU, FinCEN is the U.S. representative to the Egmont Group. No Iranian government entity is, nor ever has been, a member of the Egmont Group.

…[T]he level of U.S.-Iran cooperation on AML/CFT matters is nonexistent. As a result, U.S. law enforcement and regulatory officials have an extremely limited ability to obtain information about transactions originating in or routed through Iran.

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5. Organized Crime

See Chapter 16 for a discussion of sanctions related to transnational organized crime.

6. International Crime Issues Relating to Cyberspace

a. UK CLOUD Agreement

In 2019, the United States concluded its first agreement under the Clarifying Lawful Overseas Use of Data Act ("CLOUD Act"), which was signed into law as part of the Consolidated Appropriations Act, 2018, Div. V, Pub. L. 115-141, 132 Stat. 348. The Agreement between the Government of the United States of America and the

Government of the United Kingdom of Great Britain and Northern Ireland on Access to Electronic Data for the Purpose of Countering Serious Crime (the "Agreement") was signed at Washington on October 3, 2019. The Agreement, upon its entry into force, would facilitate lawful access by the United States or the United Kingdom for purposes of countering serious crime to certain electronic communications data stored by or accessible to a communications service provider and subject to the laws of the other country. It would eliminate the main source of potential conflicting legal obligations between U.S. and UK law that might otherwise arise when a communications service provider is served with a lawful order issued by one party to the Agreement that requires the production of electronic communications data—such as content, metadata, or traffic data—stored by or accessible to the communications service provider and subject to the law of the other party. It would also commit the United States and the United Kingdom to ensuring that their domestic laws permit communication service providers to preserve electronic communications data upon request and disclose subscriber information data outside of the Agreement.

In order to bring the Agreement into force, the CLOUD Act requires the Attorney General, with the concurrence of the Secretary of State, to determine that the United Kingdom satisfies the CLOUD Act's demanding requirements with respect to human rights and rule of law protections and that the Agreement itself meets the rigorous requirements of the CLOUD Act. The Attorney General must submit a written certification of such determination to Congress. The Agreement must also be presented to Congress for a 180-day review period, after which it may be brought into force unless a joint Congressional resolution of disapproval is enacted into law during the mandatory review period.[*] The Agreement is available at https://www.justice.gov/ag/page/file/1207496/download. The Department of Justice issued a press release on the signing of the agreement, which is available at https://www.justice.gov/opa/pr/us-and-uk-sign-landmark-cross-border-data-access-agreement-combat-criminals-and-terrorists.

b. UN General Assembly

On December 19, 2019, a State Department official with expertise in cyber policy provided a briefing on multilateral cyber efforts. The briefing is transcribed at https://www.state.gov/state-department-official-on-multilateral-cyber-efforts/ and excerpts follow. The UN General Assembly resolution discussed below was adopted on December 27, 2019. U.N. Doc. G.A. Res. 74/247 (Dec. 27, 2019),

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[*] Editor's note: On January 16, 2020, the Department of Justice transmitted to Congress notification that the Attorney General, with the concurrence of the Secretary of State, had certified that the requirements of the CLOUD Act are satisfied.

On November 18th in the third committee of the UN General Assembly, a Russian-sponsored resolution on cyber crime was passed. And that resolution is now before the entire UN General Assembly with a vote imminently, expected by Christmas Eve. And …we have very serious concerns about that resolution in particular because it calls for the formation of a group that would look at creating a new cyber crime treaty. And that emphasis that Russia has been sponsoring is the reflection of kind of decades-long effort that they have been at to get enough supporters to push forward their vision of what this new cyber crime treaty would look like.

Our problems with it are that, one, we already have a cyber crime treaty in existence, the Budapest Convention. We also have … various international fora, including the UN, to handle this type of thing. Also the Russians clearly are interested in pushing their vision of what the internet should look like in the future, and that's conflating this idea of cyber crime with cyber security and cyber controls. So they're interested in a treaty that would give them the type of control over the internet space that they're interested in and that stand against fundamental American freedoms.

And in addition to all of this, we see the greatest need right now in the cyber crime area as building capacity among the nations of the world so that they can tackle this with greater alacrity, so that they can go after bad guys with more ease, so that we can trade information with a little bit more ease. And again, we have the existing mechanisms to do that. This Russian effort would take resources and time away from building that capacity among the states of the world, the countries of the world, and focus it more on putting together a treaty which … we don't think is necessary ….

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…[W]e have an issue with what they're proposing because based on previous language, based on previous resolutions they've passed, based on previous records of behavior, what Russia wants out of the internet space is a form of lockdown on information; a fundamental curtailment of those freedoms that the United States fully embraces and wants to see represented in the internet space, not curtailed.

* * * *

China is absolutely a supporter. Just to go back to what I was saying before, … the title of [the resolution] is, "Countering the Use of Information and Communications Technologies for Criminal Purposes." And obviously, there's a grave difference, particularly in that arena, with what Russia describes as a criminal purpose and what the United States would describe as a criminal purpose.

And again, I keep citing Russia because they're the originator of the resolution, but there are countries like China and … others … who are interested in that result. In other words, that type of governance of the internet space. However, we believe there are also countries that are not exactly sure what a new cyber crime treaty means and they're perhaps not aware of this more malign intent. And so our efforts have been along the lines of trying to educate as well as point out that many of the things Russia claims are needed in … a new cyber crime treaty … are already existent under the Budapest Convention, under the intergovernmental experts group that

works out of Vienna that's part of the UN system that is also handling this, and has specifically been charged by the United Nations to cover this issue and come up with an assessment on it.

* * * *

…So if we look at the Budapest Convention, for example, there are 64 member-states that are members of it, and over 130 countries use it as the basis for how they govern cyber crime. And in those fundamentals, I think you see an embrace of the values that we like.

* * * *

I can try to give two results that might occur from an adoption of the cyber crime treaty.

First, going back to this point of resources, so if nations and the United Nations system is devoting resources, time, and energy to the negotiation of a new cyber crime treaty, that's, by definition, money that nations and the United Nations are not devoting to building the capacity of X Country to try and handle cyber crime or to try to understand it or to try to liaise with other law enforcement bodies around the world or international law enforcement bodies to come to some sort of better capacity, better ability to handle this type of stuff.

In addition, if Russia is able to codify in a United Nations treaty that internet controls are necessary and able to even detail what those controls should be, that's inimical to the United States interests because that doesn't tally with the fundamental freedoms we see as necessary across the globe. That's not commensurate with our vision of democracy.

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C. INTERNATIONAL TRIBUNALS AND OTHER ACCOUNTABILITY MECHANISMS

1. International Criminal Court

a. General

On March 15, 2019, Secretary Pompeo delivered remarks to the press on several topics, including the International Criminal Court ("ICC"). Excerpts follow from Secretary Pompeo's remarks, which are available in full at https://www.state.gov/remarks-to-the-press-6/.

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In a speech last year in Brussels, I made clear that the Trump administration believes reforming international institutions, refocusing them back on their core missions, and holding them accountable when they fail to serve the people that they purport to help. We seek to partner with responsible nations to make sure that international bodies honor the principles of liberty,

sovereignty, and the rule of law. Nation-states come together to form these institutions, and it's only with their consent that these institutions exist.

Since 1998, the United States has declined to join the ICC because of its broad, unaccountable prosecutorial powers and the threat it poses to American national sovereignty. We are determined to protect the American and allied military and civilian personnel from living in fear of unjust prosecution for actions taken to defend our great nation. We feared that the court could eventually pursue politically motivated prosecutions of Americans, and our fears were warranted.

November of 2017, the ICC prosecutor requested approval to initiate investigation into, quote, "the situation in Afghanistan," end of quote. That could illegitimately target American personnel for prosecutions and sentencing. In September of 2018, the Trump administration warned the ICC that if it tried to pursue an investigation of Americans there would be consequences. I understand that the prosecutor's request for an investigation remains pending.

Thus today, persistent to existing legal authority to post visa restrictions on any alien, quote, "whose entry or proposed activities in the United States would have potentially serious adverse foreign policy consequences," end of quote, I'm announcing a policy of U.S. visa restrictions on those individuals directly responsible for any ICC investigation of U.S. personnel. This includes persons who take or have taken action to request or further such an investigation. These visa restrictions may also be used to deter ICC efforts to pursue allied personnel, including Israelis, without allies' consent. Implementation of this policy has already begun. Under U.S. law, individual visa records are confidential, so I will not provide details as to who has been affected and who will be affected.

But you should know if you're responsible for the proposed ICC investigation of U.S. personnel in connection with the situation in Afghanistan, you should not assume that you will still have or will get a visa, or that you will be permitted to enter the United States. The United States will implement these measures consistent with applicable law, including our obligations under the United Nations Headquarters Agreement. These visa restrictions will not be the end of our efforts. We are prepared to take additional steps, including economic sanctions if the ICC does not change its course.

The first and highest obligation of our government is to protect its citizens and this administration will carry out that duty. America's enduring commitment to the rule of law, accountability, and justice is the envy of the world, and it is the core—at the core of our country's success. When U.S. service members fail to adhere to our strict code of military conduct, they are reprimanded, they're court-martialed, and sentenced if that's what's deserved. The U.S. Government, where possible, takes legal action against those responsible for international crimes. The United States directs foreign aid to strengthen foreign nations' domestic justice systems, the first and best line of defense against impunity.

The United States also supports international hybrid legal mechanisms when they operate effectively and are consistent with our national interest. These would include, for example, the mechanism handling Rwandan and Yugoslav atrocities and international evidence collection efforts in both Syria and Burma. But the ICC is attacking America's rule of law. It's not too late for the court to change course and we urge that it do so immediately.

* * * *

On October 9, 2019, the State Department issued a statement regarding U.S. policy on the ICC. The statement is available at https://www.state.gov/u-s-policy-on-the-international-criminal-court-remains-unchanged/. See *Digest 2018* at 88-89 for discussion of the new U.S. policy on the ICC announced in 2018. The October 9, 2019 press statement follows.

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In April, the International Criminal Court (ICC) resoundingly rejected the ICC Prosecutor's request to open an investigation into Afghanistan, including allegations against U.S. personnel. More recently, the ICC Prosecutor asked the judges for permission to appeal aspects of that rejection. On September 17, the Court partially granted the Prosecutor's request, allowing a limited appeal to proceed. Last week, the ICC Prosecutor submitted a brief to appeal the April decision. In the meantime, the earlier decision stands, rejecting any Afghanistan investigation.

The United States remains committed to protecting its personnel from the ICC's wrong-headed efforts spearheaded by a few grandstanders. The judges were right to reject the Prosecutor's outrageous request to investigate U.S. personnel on April 12, and the appeal process is pointless as far as we are concerned. The United States is not a party to the ICC's Rome Statute and has consistently voiced its unequivocal objections to any attempts to assert ICC jurisdiction over U.S. personnel. An investigation by the ICC of U.S. personnel would be unjustified and unwarranted, and any ICC effort to re-open this case would be a waste of its time and resources—something the ICC judges recognized when they stated in their decision that such an investigation would be "inevitably doomed to failure."

As previously stated, the United States will take all necessary steps to defend its sovereignty and protect U.S. and allied personnel from unjust investigation and prosecution by the ICC. On March 15, we announced a policy restricting issuance of visas to any and all ICC officials determined to be directly responsible for an ICC investigation of U.S. personnel, or of allied personnel without our allies' consent. We will remain vigilant in applying this policy. The United States respects the decision of those nations that have chosen to join the ICC, and in turn, we expect that our decision not to join and not to place our people under the court's jurisdiction will also be respected.

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John Giordano of the U.S. delegation to the UN provided the U.S. explanation of position ("EOP") on the report of the ICC on November 4, 2019. The EOP is excerpted below and available at https://usun.usmission.gov/explanation-of-position-of-the-united-states-report-of-the-international-criminal-court-agenda-item-73/.

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The United States has historically been, and will continue to be, a strong supporter of meaningful accountability and justice for victims of atrocities through appropriate mechanisms. Perpetrators of atrocity crimes must face justice, but we must also be careful to recognize the right tool for each situation.

I must reiterate our continuing and longstanding principled objection to any assertion of ICC jurisdiction over nationals of States that are not parties to the Rome Statute, including the United States and Israel, absent a UN Security Council referral or the consent of such a State. We also wish to reiterate our serious and fundamental concerns with the ICC Prosecutor's proposed investigation of U.S. personnel in the context of the conflict in Afghanistan.

The United States remains a leader in the fight to end impunity and supports justice and accountability for international crimes, including war crimes, crimes against humanity, and genocide. The United States respects the decision of those nations that have chosen to join the ICC, and, in turn, we expect that our decision not to join and not to place our citizens under the court's jurisdiction will also be respected.

Accordingly, the United States dissociates itself from consensus on this resolution.

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b. Israel

On December 20, 2019, the State Department issued a press statement by Secretary Pompeo expressing U.S. opposition to the decision of the ICC to continue to pursue a case on the "situation in Palestine." The press statement, available at https://www.state.gov/the-international-criminal-court-unfairly-targets-israel/, is excerpted below.

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Today, the Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, announced that she has concluded her preliminary examination into the so-called "situation in Palestine" and asked the ICC judges to confirm that the Court may exercise jurisdiction over the West Bank, East Jerusalem, and Gaza. By taking this action, the Prosecutor expressly recognized that there are serious legal questions about the Court's authority to proceed with an investigation.

We firmly oppose this and any other action that seeks to target Israel unfairly. As we made clear when the Palestinians purported to join the Rome Statute, we do not believe the Palestinians qualify as a sovereign state, and they therefore are not qualified to obtain full membership, or participate as a state in international organizations, entities, or conferences, including the ICC.

The United States also reiterates its longstanding objection to any assertion of ICC jurisdiction over nationals of States that are not parties to the Rome Statute, including the United States and Israel, absent a referral from the UN Security Council or the consent of such a State.

The United States respects the decision of those nations that have chosen to join the ICC, and in turn, we expect that the decision on the part of the United States and Israel not to join and not to place our personnel under the court's jurisdiction will also be respected.

The United States remains deeply, firmly, and consistently committed to achieving a comprehensive and lasting peace between Israel and the Palestinians. The only realistic path forward to end this conflict is through direct negotiations.

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c. Libya

On May 8, 2019, Ambassador Jonathan Cohen, Acting U.S. Permanent Representative to the UN, delivered remarks at a UN Security Council meeting on Libya and the ICC. Ambassador Cohen's remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-un-security-council-meeting-on-libya-and-the-icc/.

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Eight years ago, the UN Security Council referred the situation in Libya to the International Criminal Court. The resolution addressed a dangerous moment in Libya's history. Qadhafi's horrific abuses stunned the world.

Now, as then, we stand against impunity, and support efforts to bring to justice those responsible for atrocities in Libya. We reiterate our call for Saif Al-Islam Qadhafi and Al-Tuhamy Mohamed Khaled, the former head of Libya's notorious Internal Security Agency, to be held to account for alleged crimes against humanity, for torture, and for the murder and persecution of hundreds of civilians in 2011. We also renew our call for Libyan authorities to hold Mahmoud al-Werfalli to account for alleged unlawful killings.

The United States is deeply concerned by instability in Tripoli, which is endangering innocent civilians. Lasting peace and stability can only come through a political solution.

All parties should rapidly return to UN political mediation, the success of which depends upon a ceasefire in and around Tripoli.

We support the ongoing efforts of UN Special Representative Salamé and the UN Support Mission in Libya to help avoid further escalation and chart a path forward that provides security and prosperity for all Libyans.

This briefing is an important reminder that accountability not only provides justice for victims of past violations and abuses, but it also signals that future violations and abuses will not be tolerated.

We remain concerned about abuses that human traffickers and smugglers have perpetrated against migrants, refugees, and asylum-seekers in Libya. We support efforts to hold these individuals, including government officials found to be complicit, accountable. The United States will continue to work to end impunity for human rights abuses, including the persistent problem of human smuggling and trafficking that has plagued the region.

We strongly condemn attempts by terrorists, including ISIS-Libya and AQIM, to use violence against innocent Libyans and key institutions to sow chaos. They must not be allowed to succeed, and we will continue to work to defeat these groups.

The United States has historically been, and will continue to be, a strong supporter of meaningful accountability and justice for the victims of atrocities through appropriate

mechanisms. Perpetrators of atrocity crimes must face justice, but we must also be careful to recognize the right tool for each situation.

However, I must reiterate our longstanding and principled objection to any assertion of ICC jurisdiction over nationals of states that are not party to the Rome Statute, absent a UN Security Council referral or the consent of such states. Although we note the recent decision not to authorize an investigation into the situation in Afghanistan, we remain concerned about illegitimate attempts by the ICC to assert jurisdiction. Our position on the ICC in no way diminishes the United States' commitment to supporting accountability for atrocity crimes.

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On November 6, 2019, Deputy Legal Advisor for the U.S. Mission to the UN Julian Simcock delivered remarks at a UN Security Council briefing on the ICC and the situation in Libya. Mr. Simcock's remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-the-international-criminal-court-on-the-situation-in-libya/

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…It is shameful that several of the most notorious perpetrators of crimes against the Libyan people this past decade continue to enjoy impunity.

Saif al-Islam Qadhafi, Mahmoud al-Werfalli, Al-Tuhamy Mohamed Khaled, and Abdullah al-Senussi must face justice for their alleged crimes. We call on individual Libyans or groups who harbor Saif al-Islam Qadhafi and Mahmoud al-Werfalli to deliver them to Libyan authorities immediately. We also call on those who shelter Al-Tuhamy Mohamed Khaled, the former head of Libya's notorious Internal Security Agency, to end their protection of this perpetrator.

We are also closely watching the Supreme Court of Libya's case against Abdullah Al-Senussi.

Accountability for these architects of Libya's darkest days would ensure that Libyan victims of these atrocities are not forgotten. It would also deliver a powerful deterrent message for future abusers—and to those involved in the current conflict who may be guilty of atrocities. We regret that we collectively have little to show in service of justice for the Libyan people for the suffering they have endured at the hands of these individuals.

Beyond these four cases, violence and abuses continue in Libya today. Human traffickers and smugglers prey on the most vulnerable, especially migrants, refugees, and asylum-seekers in Libya. A civil war continues to rage, and the numbers of civilian casualties and injuries are escalating. We strongly support accountability for any crimes that have been committed, including by officials and senior leaders involved in these networks.

The U.S. Government continues to receive other reports of potential human rights abuses in Libya, including accounts of arbitrary killings, forced disappearances, unlawful detention, torture, and sexual violence perpetrated by multiple militia groups and security forces, including by those in leadership and command positions.

The current conflict in Libya has had a destabilizing humanitarian effect, resulting in an increased numbers of displaced persons, including the migrant and refugee population. Prolonging this conflict will further strain the provision of basic services to the population and will contribute to political and security instability.

Libya's political and security instability has created an environment conducive to the commission of human rights abuses. In an effort to address the root causes of these atrocities, the United States continues to support a rapid return to a political process, and we thank UN Special Representative Salamé for his ongoing efforts to secure a negotiated political solution to this crisis.

Salamé and the UNSMIL team face great physical risk in the work they are doing: we are reminded of this by the terrorist attack that killed three UN employees in Benghazi a few months ago, as well as by the recent air strike—in violation of the UN arms embargo—that nearly hit the UN compound in Tripoli. We continue to call for de-escalation, a ceasefire, economic reforms, and an improvement to the security environment. And we condemn all acts of violence against the Libyan people and the UN workers who are trying to help the country achieve stability.

The United States has historically been, and will continue to be, a strong supporter of meaningful accountability and justice for victims of atrocities through appropriate mechanisms. Perpetrators of atrocity crimes must face justice, but we must also be careful to recognize the right tool for each situation.

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d. Sudan

On June 19, 2019, Minister Counselor for the U.S. Mission to the UN Mark Simonoff delivered remarks at a UN Security Council briefing on the ICC investigation in Darfur, Sudan. Mr. Simonoff's remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-the-international-criminal-courts-icc-investigation-in-darfur-sudan/.

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In April, civilian-led protests led to the removal of President Omar al-Bashir, whose regime was synonymous with genocide, war crimes, crimes against humanity, and human rights violations and abuses. For months, protesters have gathered together, united in a vision for a peaceful, democratic Sudan. But rather than welcoming dialogue and discussion, those in power have responded violently.

The Transitional Military Council's (TMC) reprehensible attacks on demonstrators in Khartoum have led to over 100 deaths and hundreds injured. Reports of security forces beating and sexually assaulting protestors, and throwing victims into the Nile must be fully and fairly investigated. The TMC's grotesque display of violence against peaceful demonstrators in Khartoum was not an isolated incident. The government has also used excessive violence against internally displaced people in Darfur to stop peaceful rallies.

We are all too familiar with the unthinkable violence to which Darfuris have been subjected since 2003. Ongoing armed clashes in the Jebel Marra region between the Sudan Liberation Movement-Abdel Wahid (SLM/AW) rebel group and the Sudan Armed Forces, along with intercommunal violence in other parts of Darfur, serve as reminders of the ongoing security challenges that plague the region.

Darfur's security situation has become further challenged following delays in transitioning to a civilian-led government in Khartoum. These delays have had a negative impact on human rights throughout Sudan, and obstructed the implementation of policies to support the return of Internally Displaced Persons, including in Darfur.

We are concerned by increasing violence in IDP camps. In Darfur, sexual violence, rape, harassment, and other intimidation against women, girls, and boys remains prevalent. It is for this reason that the mission of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) remains important.

We support the African Union (AU) Peace and Security Council's June 6 communiqué, which announced the immediate suspension of Sudan from all AU activities until the establishment of a civilian-led Transitional Authority. We call on Sudan's interim military authorities to cease attacks against civilians, withdraw all undue restrictions on media and civil society, restore access to the Internet, and ensure unhindered access for medical care providers. We also urge them to respect human rights, including freedom of expression and fair trial guarantees.

In that vein, we urge the TMC to agree to the request by the Office of the High Commissioner for Human Rights for the rapid deployment of a UN human rights monitoring team. The UN should also make promoting respect of human rights the heart of its efforts in Sudan, whether through UNAMID or the UN Country Team.

Long-term stability in Darfur and throughout Sudan depends on resolving the underlying causes of the protracted conflict. This includes strengthening Sudan's judicial system to ensure accountability at the local and national levels. It includes the establishment of a fully functional civilian-led national government that is committed to reform. And it includes a commitment by Khartoum to pursue a durable peace agreement in Darfur.

There will be no lasting peace in Sudan until there is genuine accountability for the crimes that have been committed against the Sudanese people. The United States has historically been, and will continue to be, a strong supporter of meaningful accountability and justice for victims of atrocities through appropriate mechanisms. Perpetrators of atrocity crimes must face justice, but we must also be careful to recognize the right tool for each situation.

I must reiterate our longstanding and principled objection to any assertion of ICC jurisdiction over nationals of States that are not party to the Rome Statute, absent a UN Security Council referral or the consent of such States. The United States remains concerned about illegitimate attempts by the ICC to assert such jurisdiction.

We also note our disagreement with a number of aspects of the ICC Appeals Chamber's recent decision in the Jordan appeal, including the analysis and conclusions regarding customary international law and the interpretation of Security Council resolutions, but our concerns about this decision and the ICC more generally in no way diminish our commitment to supporting accountability for atrocity crimes.

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2. International Criminal Tribunals for the Former Yugoslavia and Rwanda and the International Residual Mechanism for Criminal Tribunals

On July 17, 2019, Emily Pierce, counselor for the U.S. Mission to the UN, delivered remarks at a UN Security Council briefing on the International Residual Mechanism for Criminal Tribunals ("IRMCT"). Her remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-international-residual-mechanism-for-criminal-tribunals-irmct/.

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The ongoing work of the Mechanism includes very important cases, including the appellate proceedings in the Mladić case, the ongoing Stanišić and Simatović trial, and pre-trial proceedings in Turinabo.

We should also take a moment to highlight the ruling of the Appeals Chamber regarding Radovan Karadžić in March, upholding his convictions for genocide, crimes against humanity, and war crimes, because we are just one week past the anniversary of the genocide in Srebrenica.

Twenty-four years ago, after 30,000 Bosnian Muslim women, children, and elderly men were forcibly removed from Srebrenica, more than 8,000 men and boys were murdered. The Appeals Court upheld the Trial Chambers determination that these murders—the largest mass killing in Europe since World War II—were the direct result of the decision made by Karadžić and his accomplices to destroy the Bosnian Muslims of Srebrenica.

To accomplish these evil ends, Karadžić and others first engaged in a propaganda campaign to depict Bosnian Muslims and Bosnian Croats as enemies of the Serbs, exploiting distrust and suspicion to create the kind of climate in which genocide became possible.

It is because we continue to live in the shadow of that crime that we are deeply alarmed when we see convicted war criminals being glorified and unscrupulous leaders rewriting historical events. Those who deny the truth, manufacture distrust of the institutions of justice, deny the common humanity of their neighbors, and exploit the pain of victims for their own purposes must be condemned. We do a grave injustice to those who lost their lives when we are silent in the face of the politics of division and hatred.

Although Karadžić hid for over a decade, the fact that he was found and prosecuted is a powerful testament to the courage of the victims who testified and their devotion to justice.

But the burden is not on victims to bring justice to those who perpetrated crimes against them, but rather on states. We applaud the Mechanism's continued search for the eight Rwandans still wanted for their roles in the 1994 genocide, 25 years ago. These individuals are accused of being responsible for some of the most appalling acts of our time: Felicien Kabuga, who allegedly financed the genocide; Protais Mpiranya, who led the Presidential Guard Battalion and is accused of being responsible for the killing of many moderate politicians and UN peacekeepers; and Augustin Bizimana, who led the Ministry of Defense. These men and five others remain at large, and it is all of our responsibility to bring them to justice.

Since 1998, the United States has offered financial rewards for information that leads to the arrest of Rwandan indictees and fugitives from the former Yugoslavia. We continue to offer up to $5 million for any information that leads to the arrest of these eight individuals, and let this,

and the Karadžić case, be a message to them: we will not stop looking.

If there is anything all states need to stand behind, it is justice for victims of genocide. We welcome South Africa's stated commitment to fully cooperate with the Mechanism, but we were disappointed to hear that it had not yet taken action on the Mechanism's requests. We urge the government to coordinate closely with the Mechanism in the search of fugitives.

Finally, this is a transition phase for the Mechanism and its role ensuring that accountability winds down and the responsibility increasingly lies with national authorities to finish the task of prosecuting remaining cases.

As the ICTY and the ICTR were pioneers in international criminal law, the Mechanism is a trailblazer now, showing how knowledge and skills can be transferred to national jurisdictions. We also commend the Mechanism's work to build capacity in national judiciaries in Africa and in the former Yugoslavia to build new generations of attorneys able to prosecute atrocity crimes in their own systems. As the Prosecutor reported, the Mechanism has received an unprecedented number of requests for assistance. This demonstrates its immense and ongoing value in national systems.

The United States would like to emphasize its continued commitment to accountability for perpetrators and justice for victims. We will continue to remember those who lost their lives in Rwanda and the former Yugoslavia and stand with their families and communities in their efforts to attain justice.

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3. Other Accountability Proceedings and Mechanisms

a. UN Investigative Team for Accountability of Da'esh/ISIL ("UNITAD")

Ambassador Cherith Norman Chalet, U.S. Representative for UN Management and Reform, delivered remarks on July 15, 2019 after a Security Council briefing on the situation in Iraq, where Da'esh (ISIS or ISIL) has committed atrocities against religious and ethnic minorities. Ambassador Chalet's remarks are excerpted below, and available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-un-investigative-team-for-accountability-of-daesh-unitad/.

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The plight of Iraq's ethnic and religious minorities is of critical importance to the United States. We will not waver from holding ISIS accountable for the atrocities it committed against all Iraqis.

The United States remains a strong, committed supporter of UNITAD's Security Council mandate to collect, store, and preserve evidence of ISIS's atrocities that may amount to war crimes, crimes against humanity, and genocide. We are pleased that the Security Council reiterated its unanimous support of UNITAD's mandate during the Council's first-ever trip to

Iraq last month, where Council members had a chance to engage with Special Adviser Khan and his team.

The United States welcomes the rapid initiation of UNITAD's critical activities on the ground in Iraq over the past year, and the details you've provided us this morning. The recent appointments of Iraqi experts to the UNITAD team working alongside international experts is critical to UNITAD's success, as demonstrated by the appointment of Deputy Dr. Salama Hasson al-Khafaji, who joins us today, welcome.

The United States contributed $2 million in support of UNITAD's first exhumation of mass grave sites in Sinjar that took place earlier this year. UNITAD's access to these sites [is] vital for the professional and impartial evidence collection of the unimaginable atrocities that Yezidis suffered under ISIS.

We express our thanks to member states that have also stepped up to contribute to UNITAD's operations, through funding and other support means, including the United Kingdom, Germany, Qatar, the Netherlands, the United Arab Emirates, Sweden, Turkey and Saudi Arabia, and call on other member states to swiftly support UNITAD in order for the team to collect critical evidence before it is too late.

Of course, money alone will not guarantee effective evidence collection. We welcome the Government of Iraq's commitment to work closely with UNITAD. Such close cooperation between UNITAD and the Iraqi government is essential for the team's success as demonstrated by Special Adviser Khan's frequent meetings with key Iraqi political, religious, and societal leaders over the last year.

We call upon the Government of Iraq to continue to give UNITAD the space to operate effectively. Independence and impartiality are essential to the team's credibility moving forward.

No segment of Iraqi society has escaped ISIS's terror, and it is important to develop a balanced and accurate account of events.

This will give voice to all Iraqis, including members of all Iraq's religious and ethnic groups, who have been subjected to unspeakable atrocities.

Iraq needs accountability and reconciliation to begin in order to recover from the trauma that ISIS inflicted on the Iraqi people.

In recent weeks, UNITAD has taken the important step of beginning evidence collection in Mosul, once a former ISIS stronghold. UNITAD's work there will send an important message to all Iraqis—including the Sunni community—that the international community has not forgotten the atrocities they too endured.

It is especially important for Iraq to work through a law-based process to hold ISIS perpetrators and collaborators accountable. UNITAD plays a critical role in this effort, including ensuring that exhumations and evidence collection are conducted in accordance with international standards.

We extend our appreciation to the entire UNITAD team for aiming to assure justice is never beyond reach, for the heinous acts ISIS committed.

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U.S. Permanent Representative to the UN Kelly Craft delivered remarks at a UN Security Council briefing on UNITAD on November 26, 2019. Her remarks are available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-the-un-investigative-team-for-accountability-of-daesh-isil-unitad/, and excerpted below.

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The world witnessed ISIS target innocent Iraqis, including diverse ethnic and religious communities, in barbaric attacks. Lest we forget, ISIS is responsible for the deaths of thousands of innocent Iraqi civilians. It desecrated churches and mosques and other houses of worship. It drove millions of Iraqis from their homes. It held hundreds of women as slaves, subjecting them to brutal assault.

These are acts of pure evil, and as a body dedicated to maintaining international peace and security, it is our solemn responsibility to speak the truth about what ISIS did, to document this truth, and to answer the prayer for justice for those whose lives have been turned upside down by ISIS. This is what makes UNITAD's work so important. With the support of the Iraqi government, UNITAD is moving quickly, carefully, and determinedly to create a detailed record of ISIS appalling criminality against Iraqis of all faiths.

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In September, the Security Council unanimously endorsed UNITAD's one-year mandate renewal with the support of the Government of Iraq. This mandate will provide accountability and, we hope, a measure for healing for all Iraqis.

A crucial step that several member states are taking in support of UNITAD's mandate involves voluntary contributions. The United States has contributed three million dollars in support of UNITAD's field-based activities over the past year, including mass grave excavations in Sinjar, Mosul, and Tikrit. Thanks in part to this contribution, UNITAD has assisted Iraqi national authorities in excavating seventeen mass graves near the village of Kojo, which is of special significance to Iraq's Yezidi community.

We thank our partners from the United Kingdom, Germany, Qatar, Cyprus, the Philippines, the United Arab Emirates, the European Union, Denmark, Sweden, Australia and Uganda, for their voluntary contributions, and we urge other Member States to do their part to show the international community's support for the pursuit of justice on behalf of all the victims in Iraq—Yezidis, Christians, Shia and Sunni Muslims, and many, many more who have suffered at the hands of ISIS.

UNITAD's continued cooperation and coordination with Iraq's political, judicial, religious, and societal leaders is essential for the successful mandate implementation. For example, utilizing existing evidence held by Iraqi authorities greatly improved the team's ability to pursue its mandate this past year. In return, UNITAD is providing technical support to Iraqi authorities for mass grave excavations, DNA analysis, and the archiving of evidence documenting atrocities committed by ISIS.

Additionally, UNITAD has demonstrated the value of its work by directly supporting third-country criminal proceedings against members of ISIS. This is an early indicator that UNITAD will successfully use its current work in future prosecutions, including those in Iraq.

Fellow Council members, when we witness actions that can only be described as evil, it is our responsibility to name it for what it is; it's hell on earth. And we need to condemn it. But that is not enough. We must also be clear and forceful in stating that no perpetrator will ever be above the law; that we will be relentless in the pursuit of justice for the victims of ISIS; and that

we will never fail to live up to our duty to fight for the dignity of all people, most especially the weak and the vulnerable.

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b. UN International Impartial and Independent Mechanism

On April 23, 2019, Minister Counselor Simonoff delivered remarks at a UN General Assembly debate on the International, Impartial and Independent Mechanism for Syria ("IIIM"). His remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-ga-debate-on-the-international-impartial-and-independent-mechanism-for-syria/.

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The United States welcomes the submission of the third report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.

We are proud to support the IIIM's work, and congratulate the IIIM on its progress so far. In particular, I would like to applaud Catherine Marchi-Uhel, Head of the Mechanism, and her Deputy, Michelle Jarvis, on their significant efforts in standing up the IIIM.

That is why the United States recently announced our intention to provide an additional $2 million in support of the IIIM on top of our $350,000 contribution last year. The United States' commitment to accountability in Syria is unwavering because without accountability, the peace we seek—the stable, just, enduring peace the Syrian people deserve—will remain elusive.

In addition to our voluntary contributions, I am pleased to announce today that the United States will also support funding for the IIIM from the UN Regular Budget through assessed contributions. We urge all member states to support Regular Budget funding for the IIIM through the Fifth Committee, and ultimately through this Assembly, so that the Mechanism's important work will be on firm financial footing.

The United States would also like to stress the importance of maintaining fiscal discipline through reprioritization of resources in the UN regular budget when incorporating the IIIM.

In the year since the IIIM started its work, it has made impressive progress to implement its mandate to collect, consolidate, preserve, and analyze evidence of violations of international humanitarian law and human rights violations and abuses. The United States applauds the IIIM's commitment to ensuring that in the process of pursuing justice and accountability it integrates Syrian women and girl's voices.

The United States also applauds the widespread cooperation between member states, civil society, and multilateral mechanisms including the Commission of Inquiry and IIIM. Together with civil society, the international community is engaged in a robust and comprehensive approach that can ultimately bring justice to the thousands of victims of the Assad regime's atrocities.

The IIIM is making invaluable progress in its structural investigations and specific-case building work that are providing the foundations for criminal cases. The United States looks forward to this information being available to support new prosecutions where jurisdiction exists, in accordance with international law.

The recent arrests of Assad regime officials in Germany and France demonstrate the valuable role outside documentation can play in supporting justice processes in countries other than Syria. Outside documentation was crucial in the civil case before the U.S. District Court in Washington D.C. that found the Assad regime civilly liable for the extra-judicial killing of American journalist Marie Colvin.

Accountability is also necessary for the use of chemical weapons in Syria. For example, member states of the Organization for the Prohibition of Chemical Weapons (OPCW) voted overwhelmingly last year to give the organization additional tools to respond to chemical weapons use, including the means to identify the perpetrators of chemical weapons attacks in Syria. This was a significant achievement towards holding accountable those who use chemical weapons in Syria.

The United States strongly supports the OPCW's attribution arrangements. We look forward to its new Investigation and Identification Team becoming fully operational and beginning its work to identify perpetrators of chemical weapons use in Syria for those cases where it has been determined that the use or likely use of chemical weapons has occurred.

Eight years ago, the Assad regime chose to meet Syrians' peaceful demands for respect for their human rights and fundamental freedoms with barrel bombs, chemical weapons, starvation, sexual violence, torture, arbitrary detention, and denial of fair trial guarantees. Numerous UN reports have repeatedly documented these acts, some of which may amount to crimes against humanity and war crimes by the regime.

The United States will continue to provide the political, diplomatic, and financial support essential to ensure there are real consequences for the atrocities committed in Syria—whether it be the thousands in arbitrary detention in Assad's prisons, those who have suffered and been killed by indiscriminate barrel bomb and chemical weapons attacks, or the many who have been exposed to the regime's starve and surrender tactics against civilians in Homs, Aleppo, Darayya, and eastern Ghouta. The United States, alongside our many allies and partners, remains committed to holding perpetrators of atrocities in Syria accountable.

It is deeply regrettable that the Security Council is unable to find consensus on ways to ensure accountability for the Syrian people. The United States expresses its appreciation to members of the General Assembly for their role in establishing and providing a mandate for the IIIM. Attempts to undermine the IIIM by claiming that the General Assembly overstepped its authority in establishing the IIIM are baseless. We emphatically reject arguments that the IIIM was created in violation of the UN Charter.

The IIIM is a vital mechanism that will help provide prosecutors and investigators with the evidence needed to make the case during trial, thereby achieving a measure of justice for the many victims of Assad regime atrocities. The Syrian people should be heard, and every individual Syrian should have the opportunity to seek justice. Accountability and justice are essential to the international community's efforts to ensure a lasting UN-led political process in Syria can take hold.

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Cross References

Visa Waiver Program, **Ch.1.B.3.**
U.S. v. Park *(prosecution for production abroad of child pornography)*, **Ch. 4.C.3.**
Children in Armed Conflict, **Ch. 6.C.1**
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Iran sanctions, **Ch. 16.A.1.**
Terrorism sanctions, **Ch. 16.A.9.**
Cyber activity sanctions, **Ch. 16.A.10**
Magnitsky and other corruption and human rights sanctions, **Ch. 16.A.11.**
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Colombia steps toward accountability, **Ch. 17.B.3.**
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Use of force issues related to counterterrorism, **Ch. 18.A.3.**
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Criminal prosecutions of detainees: Hamidullin*,* **Ch. 18.C.1.**